TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1912~~ 1913

No. ~~1024~~ 483

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

STANDARD OIL COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED MARCH 15, 1913.

(23589)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1014.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

STANDARD OIL COMPANY OF LOUISIANA.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER. } No. 80.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition. (Filed July 30, 1912.)

1

In the United States Commerce Court.

IN EQUITY.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
against
THE UNITED STATES OF AMERICA, RESPONDENT.

Petition.

To the honorable the judges of the United States Commerce Court:

The Standard Oil Company of Louisiana exhibits this, its petition against The United States of America, and thereupon says as follows:

I.

Your petitioner is, and at all the times hereinafter mentioned was, a private business corporation, organized and existing under the laws of the State of Louisiana, with its principal office at Baton Rouge, in said State. Your petitioner was incorporated in April, 1909, under act No. 78 of the acts of the Legislature of the
2 State of Louisiana for the year 1904, and its business is and always has been the manufacture and sale of the products of crude petroleum.

II.

That your petitioner owns and operates a large refinery at Baton Rouge, Louisiana, and ever since its incorporation has been and is now a large manufacturer of the products of petroleum. That petitioner owns some petroleum lands in the so-called "Caddo field" in the State of Louisiana, whence it produces a large amount of crude oil, and that it also buys crude oil from other producers in said field, which oil is delivered to it at said producers' wells. That

petitioner also purchases crude oil from The Prairie Oil & Gas Company, which oil is delivered by said The Prairie Oil & Gas Company into petitioner's tanks at a point near the town of Ida, in the State of Louisiana, and thereupon becomes the property of petitioner. That for the purpose of supplying to petitioner's said refinery the crude oil produced or purchased in the Caddo field and that purchased from The Prairie Oil & Gas Company and delivered as aforesaid, and solely as a plant facility, petitioner owns and operates a trunk pipe line about 266 miles long, running from petitioner's tanks at Ida to Baton Rouge, with a lateral from the Caddo field, and also a gathering pipe line system in said Caddo field, the outlet of which is the lateral line last above described. That petitioner's said refinery and all of petitioner's said pipe lines have been built by petitioner since its organization and are wholly within the State of Louisiana. That all of said pipe lines have been built on private rights of way purchased by petitioner or otherwise acquired by it through private contract. That the transportation of crude oil by petitioner through its said pipe lines is and always has been merely incidental to its manufacturing and marketing business above described, said pipe lines being used merely as a facility for transporting its own oil to its own refinery. That said
3 pipe lines have always been owned and used solely and exclusively by petitioner and solely for the purpose of and in the transaction of petitioner's private business, and that petitioner has never piped or transported, or permitted to be piped or transported, through its said pipe lines any oil or other commodity for or belonging to any other person, firm, or corporation, nor has any portion of petitioner's pipe lines ever been offered to or used by any one for the carriage or transportation of oil or other commodity for hire. That, on the contrary, all the oil which has been piped or transported through petitioner's said pipe lines has been solely and exclusively owned by petitioner and has been used by it in the conduct of its private business. That petitioner has never made or had any contract, agreement, arrangement, or understanding whereby any other person, firm, or corporation has or had any right or interest in said pipe lines, or in their use or operation, and that petitioner has never established or charged, nor collected or received from itself or any other person, firm, or corporation, any tariff, rates, or charges of any description for or in respect of the transportation of oil or other commodity through its said pipe lines or any thereof.

III.

That petitioner has never in any way held itself out to the public as a common carrier, and has no right of eminent domain or franchise as a common carrier, and has never attempted or assumed to exercise such right or franchise. That, on the contrary, the statute under which petitioner is incorporated, to wit, Act No. 78 of the acts of the Legislature of the State of Louisiana for the year 1904, by sec-

tion 3 thereof, expressly excludes from the provisions of said act "corporations designed to carry on any business which shall entitle the corporation designated to exercise the power of eminent domain."

4

IV.

That heretofore the Interstate Commerce Commission, which will hereinafter be designated "the commission," upon its own motion, instituted a proceeding entitled "In the matter of pipe lines, No. 4199," in which proceeding your petitioner and various other corporations and partnerships were made respondents; and thereupon, and on the 8th day of June, 1911, the commission made a certain order, a copy of which is hereto annexed, marked Exhibit A, and prayed to be read as a part hereof, which said order was thereafter served upon your petitioner. That subsequently certain hearings were had in said proceeding and certain testimony taken therein by the commission. That throughout said hearings the petitioner insisted and objected that it was not subject to the "act to regulate commerce" or the acts amendatory thereof or supplementary thereto and that the commission had no jurisdiction over it or its said pipe lines. That nevertheless, and notwithstanding said objections of the petitioner, and although all of the facts herein alleged were made to appear and were established before the commission, thereafter, and on the 3rd day of June, 1912, the commission made and entered a further order in said proceeding, a copy of which is hereto annexed, marked Exhibit B, and prayed to be read as a part hereof, and caused the same to be served upon the petitioner. That by the terms of said order of the 3rd day of June, 1912, your petitioner is notified and required to file with the commission, on or before the 1st day of September, 1912, schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce, and the commission has thereby assumed jurisdiction over your petitioner and its pipe lines as subject to the provisions of the act to regulate commerce. The said order will therefore become effective on the 1st day of September, 1912, unless it be set aside or its enforcement enjoined or otherwise suspended before that day.

V.

Your petitioner avers that said order of June 3rd, 1912, is, as against it, unlawful and unconstitutional, inasmuch as the commission has no jurisdiction over petitioner or its said pipe lines, and that therefore said order of June 3rd, 1912, should not, as to it, be enforced or allowed to become operative.

VI.

Your petitioner avers, because of the facts herein set forth, that the order of June 3rd, 1912 (Exhibit B) is unlawful and unconstitutional and should not be enforced or allowed to become operative:

(a) Because section 1 of the act to regulate commerce is not applicable to your petitioner or its said pipe lines;

(b) Because if section 1 of the act to regulate commerce is to be construed as applying to your petitioner or its said pipe lines, then, to that extent, the act is unconstitutional and violates the fifth amendment of the United States Constitution, in that it deprives your petitioner of property without due process of law and takes your petitioner's private property for public use without just compensation.

In connection with the averments in this section of the petition contained, petitioner calls the attention of the court to the fact that the commission, in its report accompanying said order of June 3rd, 1912, filed in the above-mentioned proceeding, entitled "In the Matter of Pipe Lines, No. 4199," says:

"We shall not consider the constitutional question here in-
6 volved. If there was doubt in our minds as to the purpose of Congress, it would be proper to resolve that doubt upon the side of constitutional safety, but it seems quite manifest to us, from the history of this amendment to the act and from its language, that Congress intended to convert the interstate oil pipe lines of the country into common carriers. Whether Congress could lawfully so act is a matter for the courts judicially to decide. The Interstate Commerce Commission is an administrative body which may not presume to annul by interpretation an act of the Federal Legislature. So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it may be conceded that Congress could not impose upon a private pipe line the duties and responsibilities of a common carrier, it is not clear but that the provisions of this act could be upheld upon the ground that Congress was establishing a condition to which any pipe-line company must conform which transported oil across a State border."

VII.

Your petitioner further avers that its said pipe lines are solely adapted for, and that their present capacity is only sufficient for, petitioner's own private business, they being wholly employed at all times in transporting oil required for the operation of petitioner's refinery and the conduct of petitioner's said business; that any oil carried for others in petitioner's lines would displace a like amount now carried for petitioner itself and required, as aforesaid, for petitioner's business; that any considerable falling off in the supply for petitioner's business would necessarily result in the operation of petitioner's refinery at a higher average cost; that a reduction in the supply of crude oil to petitioner's refinery would also necessitate discharging many of petitioner's refinery employees; that these em-
ployees belong to a class of skilled laborers who are limited in
7 number and in great demand, and that, therefore, as has been shown by experience, they would go elsewhere to seek employ-

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ment, with the result that their services would be permanently lost to petitioner, with no ready way of replacing them hereafter if former conditions of supply should be restored; that the use of the petitioner's pipe lines by the public, by curtailing the supply of crude oil furnished to your petitioner's refinery, will limit the production of said refinery and interfere with the performance of your petitioner's contracts with its customers, to its great damage; that the enforcement of said order of June 3rd, 1912, would therefore necessitate a substantial readjustment and rearrangement of petitioner's business, pending which petitioner would be unjustly subjected to embarrassment and serious loss; that compliance with said order compelling it to receive, carry, and transport through its pipe lines oil for the public would cause further great loss to petitioner, because the transportation through its pipe lines of oils of widely different grades and gravities would produce a large amount of contamination, with a resulting substantial depreciation in the quality and value of the oil belonging to petitioner and carried through petitioner's lines, which depreciation would cause your petitioner great damage.

VIII.

Your petitioner therefore avers that the said order of the commission made and entered the 3rd day of June, 1912 (Exhibit B), should, as to petitioner, be wholly set aside and annulled, and that, pending a final determination herein, said order should, as to petitioner, be suspended and its enforcement and execution enjoined. Unless the order be thus suspended and enjoined, petitioner will be compelled to file and publish tariffs, thus holding itself out to the public as a common carrier; will be compelled substantially to readjust its business, to carry on the same at a greater average cost
8 and with a demoralization of its force of skilled employees; that it will be compelled to multiply its pipe lines, in order to furnish increased capacity, to reconstruct its plant at its various delivery stations, and to provide additional tanks at its pumping stations and terminals, so as to reduce the amount of loss by contamination—all of which will involve a large outlay of money, which would be wasted if the said order of June 3rd, 1912, should finally be held to be unlawful. That, on the other hand, if said order be not obeyed by petitioner, many suits for damages are liable to be brought against your petitioner by shippers desiring to ship oil through petitioner's said lines, whereby your petitioner would be subjected to a multiplicity of suits and great expense, loss and damage would be inflicted upon petitioner. That petitioner will therefore suffer irreparable injury should it not be protected from present compliance with the said order of June 3rd, 1912, in the event that that order be finally set aside and annulled.

In view of the premises, petitioner prays that as to it the said order made and entered by the Interstate Commerce Commission on

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the 3rd day of June, 1912 (Exhibit B) may be wholly set aside and annulled; that its enforcement and execution may be enjoined during the pendency of this suit and until final decree herein; that an interlocutory injunction may be awarded; that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, an order be entered suspending the said order of the commission and enjoining the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein, and that petitioner may have such other and further relief as may be proper.

And, to this end, petitioner prays that The United States of America may be made a party defendant hereto, and that a
9 subpœna may be granted, commanding it to appear herein and answer the allegations of this petition, but not under oath (an answer under oath being hereby expressly waived), and to stand and abide such orders and decrees as may be herein made.

And, as in duty bound, petitioner will ever pray, &c.

STANDARD OIL COMPANY OF LOUISIANA,
By F. W. WELLER, *President*.
CHESTER O. SWAIN,
Solicitor for Petitioner,
26 Broadway, New York City.

M. F. ELLIOTT,
JOHN G. MILBURN,
Of Counsel.

STATE OF NEW YORK,
County of New York, *ss.*:

F. W. Weller, being duly sworn, deposes and says: That he is an officer, to wit: President of the Standard Oil Company of Louisiana, the petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

F. W. WELLER.

Sworn to before me this 27th day of July, 1912.
[NOTARIAL SEAL.]
M. H. EAMES,
Notary Public, Kings County.

Certificate filed in New York County, Certificate No. 15.

10 *Exhibit A.*

Interstate Commerce Commission.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

Present: Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, commissioners.

No. 4199.

In the matter of pipe lines.

Complaint being made to this commission that the carriers hereinafter named, and each of them, have established certain rates, classifications, and regulations which are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and acts amendatory thereof, and that the practices of said carriers, and of each of them, in the conduct of business subject to said act are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of said act, and good cause appearing therefor.

It is ordered, that an inquiry be, and the same is hereby, instituted into the above-mentioned matters by this commission on its own motion and that the rates, classifications, regulations, and prac-
11 tices of the various corporations and persons engaged in the transportation of oil and other commodities, except water, and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe line and partly by water, subject to the act to regulate commerce and the acts amendatory thereof, and of each of them, to determine whether such rates, classifications, regulations, or practices, or any of them, are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the said act, and to determine the manner and method in which the business of said corporations and persons and each of them is conducted.

It is further ordered that the following corporations and persons engaged in such transportation subject to said act to regulate commerce, and acts amendatory thereof, be, and each of them is hereby, made parties respondent to this proceeding, viz: The Buckeye Pipe Line Company, The Columbia Pipe Line Company, The Crescent Pipe Line Company, Cumberland Pipe Line Company (Incorporated), Emery Pipe Line, The Eureka Pipe Line Company, Gulf Pipe Line Company, Gulf Pipe Line Company of Oklahoma, Higgins Oil & Fuel Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Producers & Refiners Oil Company (Limited), Producers Oil Company (Limited), Pure Oil Company, South West Pennsylvania Pipe Lines, Southern Pipe Line Company,
12 The Texas Company, United States Pipe Line Company, Acme Oil Company, Anchor Oil & Gas Company, Associated Oil Company, Associated Pipe Line Company, Central Oil Company

of Los Angeles, Cornplanter Refining Company, Corsicana Refining Company, Dougherty & Son Refining Company, W. H., Evangeline Oil Company, Franklin Pipe Line Company, Guffey Petroleum Company, J. M., Gulf Refining Company of Louisiana, Industrial Pipe Line Company, Kansas Cooperative Refining Company, Kansas Crude Oil & Gas Company, Kansas Natural Gas, Oil & Pipe Line Improvement Company, Kasigan Oil, Gas & Power Company, Manhattan Oil Company, The Modelo Oil Company, National Pipe Line Company, National Refining Company, The Ohio Oil Company, Paragon Refining Company, Prairie Oil & Gas Company, Puente Oil Company, Pure Oil Company, Rio Bravo Oil Company, Security Oil Company, Standard Oil Company of California, Standard Oil Company of Kansas, Standard Oil Company of Louisiana,
13 Sun Company, Sun Pipe Line Company, Tidewater Oil & Pipe Company, Tidewater Pipe Company (Limited), Uncle Sam Oil Company, Uncle Sam Oil Company of Kansas, Union Oil Company of California, The Union Petroleum Company of Philadelphia, Union Pipe Line Company, Vacuum Oil Company, Wellsville Refining Company.

A true copy.

JUDSON C. CLEMENTS,
Chairman.

[SEAL.]

Exhibit B.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 3d day of June, A. D. 1912.

No. 4199.

In the matter of pipe lines.

This proceeding having been instituted by the commission on its own motion, and investigation having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered that respondents, The Oklahoma Pipe Line
14 Company, The Prairie Oil & Gas Company, Standard Oil Company of Louisiana, The Ohio Oil Company, Standard Oil Company of New Jersey, The Tidewater Pipe Company (Limited), Producers & Refiners Oil Company (Limited), United States Pipe Line Company, Pure Oil Company, Pure Oil Pipe Line Company, The National Pipe Line Company, The Uncle Sam Oil Company, and The Uncle Sam Oil Company of Kansas be, and they are hereby, notified and required to file with this commission, on or before the 1st day of September, 1912, schedules of their rates and charges for

the transportation of oil, in compliance with the provisions of the act to regulate commerce.

By the commission.

JOHN H. MARBLE,
Secretary.

[SEAL.]

15 In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT. | No. 80.

Order extending time to answer.

(Entered July 31, 1912.)

Upon application duly made in that behalf, and good cause being shown, it is ordered that the time within which the United States of America, Respondent, and Interstate Commerce Commission, Intervening Respondent, may answer the petition filed in the above-entitled cause, be, and the same is hereby, extended to and including September 16, 1912.

MARTIN A. KNAPP,
Presiding Judge.

15½ In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT. | IN EQUITY,
No. 80.

Appearance.

(Filed August 2, 1912.)

To Mr. G. F. Snyder, clerk of said court:

I hereby enter herein the appearance of the Interstate Commerce Commission as intervening respondent, and of myself as its solicitor.

Dated July 30, 1912.

CHAS. W. NEEDHAM,
Assistant Solicitor.

In The United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, petitioner,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 80.

ANSWER OF THE UNITED STATES.

Comes now the United States of America by its counsel and for answer to the petition filed herein against it says:

I. Answering Paragraph I of the petition, this respondent denies that the petitioner is, and at all times hereinafter mentioned was, a private business corporation, but this respondent admits that the petitioner was organized as a corporation under the laws of the State of Louisiana. Respondent has no knowledge that petitioner's principal office is at Baton Rouge in said State, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent admits that the petitioner was incorporated in April, 1909, under act No. 78 of the acts of the Legislature of the State of Louisiana for the year 1904, but this respondent denies that the petitioner's business is and always has been the manufac-

ture and sale of the products of crude petroleum. Respondent alleges that the principal business of the petitioner is and always has been the transportation of oil by means of pipe lines. The said petitioner has an authorized capital stock of $5,000,000, and the business and objects for which petitioner was incorporated are stated in its charter as follows, to wit:

"The objects and purposes for which this corporation is established and the nature of the business to be carried on by it are hereby declared to be: To prospect and bore for, mine, market, and sell petroleum and gas; to purchase, transport, sell, produce, refine, and export petroleum and its products, and to manufacture the by-products therefrom arising; to buy and sell naval stores; to lease or construct, maintain, and operate pipe lines with proper pumping stations and storage tanks for the distribution and storage of petroleum or gas, and in connection therewith to erect, maintain, and operate a telegraph or telephone line or lines; to charter, own, and operate ships, tugs, barges, and other vessels for the transportation of petroleum and its products, and to lease or own or operate wharves and docks, tanks, cars and other equipment necessary for the transportation of petroleum and its by-products by land or water, and generally to have, hold, and exercise all such incidental powers and privileges as relate to the objects herewith above set forth."

Respondent is informed and believes, and upon such information and belief it charges, that the peti-

tioner is exercising and discharging each and every of the powers conferred upon it by its charter, and that a vast volume of the business conducted by the petitioner, such as transporting petroleum in interstate commerce, the ownership and operation of ships, tugs, barges, and other vessels for the transportation of petroleum and its products, and the leasing or owning or operating of wharves and docks, tanks, cars, and other equipment necessary for the transportation of petroleum and its by-products by land or water, and in connection therewith the erection, maintenance, and operation of telegraph or telephone line or lines, constitute a public business. Respondent alleges that the volume of business represented by the pipe lines of the petitioner far exceeds the volume of any and all other business of the petitioner.

II. Answering Paragraph II of the petition, respondent admits that the petitioner owns and operates a large refinery at Baton Rouge, La., and admits that ever since its incorporation it has been and is now a manufacturer of the products of petroleum. Respondent admits that the petitioner owns some petroleum lands in the so-called Caddo field, in the State of Louisiana, whence it produces some crude oil, and that it also buys crude oil from other producers in said field, which said oil is delivered to it at said producers' wells; but respondent alleges that the pipe lines of the petitioner are located at the producers' wells and that by means of the pipe line owned and controlled by the petitioner, and the

power wielded by it in the use of the same, the petitioner is enabled to, and it does, by dictating the prices and imposing the terms and conditions upon which oil may be produced and sold in the said Caddo field, and through undue preferences and unjust discriminations in favor of and against persons and localities, illegally and unlawfully controls the supply and demand of crude oil in the said Caddo field. Respondent denies that the petitioner also purchases crude oil from The Prairie Oil and Gas Company which oil is delivered by said The Prairie Oil and Gas Company in the petitioner's tanks at a point near the town of Ida, in the State of Louisiana in manner and form as in said Paragraph II alleged, but respondent alleges that any oil purchased from or through The Prairie Oil & Gas Company is transported by pipe line from the Mid-Continent field, and when the transportation thereof commences at the Mid-Continent field until the said oil is delivered at Baton Rouge the same is intended for and destined to the petitioner at Baton Rouge, and that petitioner is the principal patron at Baton Rouge of The Prairie Oil & Gas Company, in the sale and transportation by pipe line of crude oil to that point, the two companies operating jointly. Respondent denies that the alleged trunk pipe line referred to in Paragraph II of the petition as being about 266 miles long and running from petitioner's tanks at Ida to Baton Rouge, with a lateral from the Caddo field, and also a gathering pipe-line system in said Caddo field, is in and of itself a pipe line in any

sense and is operated solely as a plant facility, and alleges that the same is only a part or section of a trunk pipe line extending from the Mid-Continent field to Baton Rouge and that if the same were disconnected from and not operated with the said trunk pipe line, the said part or section would be worthless and of no value whatever.

Respondent admits that the petitioner's refinery is located in the State of Louisiana, but denies that all of the pipe lines used by the petitioner are wholly within the State of Louisiana. Respondent denies that all of said pipe lines have been built on private rights of way purchased by petitioner or otherwise acquired by it through private contract, and the respondent is informed and believes, and upon such information and belief it charges, that the petitioner has for very long distances in the State of Louisiana laid its said pipe lines along the public streets and highways of various municipalities and counties of the said State and has secured from the officers charged with the supervision thereof the right to lay and maintain the same upon the said streets and highways, upon such terms and conditions as to be practically without cost to the petitioner, and any private use thereof is contrary to the uses and purposes for which said streets and highways were dedicated to the public. Respondent is informed and believes, and upon such information and belief it charges, that the said pipe lines are laid and are now being operated for very long distances upon, along, and across the rights of way of railroad companies

engaged in interstate commerce, which said rights of way have been acquired for the use of the public, and not for private purposes, by the said railroad companies, in the exercise of their right of eminent domain, upon such terms and conditions as to make the same practically without cost to the petitioner, and petitioner is deriving the benefit and advantage thereof without cost to it and is using the same for its private purposes, to the detriment of the public and contrary to the uses and purposes for which it was acquired, and likewise excluding the same from the use of the public.

Respondent denies that the transportation of crude oil by petitioner through its said pipe lines is, and always has been, merely incidental to its manufacturing and marketing business above described, and denies that said pipe lines are being used merely as a facility for transporting its own oil to its own refineries. Respondent has no knowledge that said pipe lines have always been owned and used solely and exclusively by petitioner and solely for the purpose of and the transaction of petitioner's business, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent alleges that if the alleged transportation by pipe line is conducted as a private business of the petitioner it has become such and is maintained as such for the purpose of evading and in violation of the act to regulate commerce. Respondent has no knowledge that petitioner has never piped or transported or permitted to be piped or

transported through its said pipe lines any oil or other commodity for or belonging to any other person, firm, or corporation, and that no portion of petitioner's pipe lines has ever been offered to or used by anyone for the carriage or transportation of oil or other commodity for hire, and it neither admits nor denies the same, and if the same becomes material upon the hearing it will require strict proof thereof. Respondent is informed and believes, and upon such information and belief it alleges, that if it be true that no oil has been carried through the said pipe lines for any other shipper than the petitioner, and that the petitioner has never held itself out to carry oil through said pipe lines for the public, the said petitioner has been and is violating the act to regulate commerce and has been and is unduly preferring itself as a producer and shipper of oil and unjustly discriminating against other producers and shippers of oil who were and are without means of transportation, in violation of the act to regulate commerce.

Respondent has no knowledge that all the oil which has been or is piped or transported through petitioner's said pipe lines has been and is solely and exclusively owned by petitioner and has been and is used by it in the conduct of its private business, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent is informed and believes, and upon such information and belief

it charges, that if the petitioner has piped or transported, or has permitted to be piped or transported, through said pipe lines any oil or other commodity for or belonging to any other person, firm, or corporation, the quantities of the oil, the number of shipments, and the number of the shippers have not been sufficient to satisfy the requirements of the statute in such case made and provided. Respondent further alleges that in refusing to pipe or transport, or permitting to be piped or transported, through said lines any oil or other commodity for or belonging to any other person, firm, or corporation, the petitioner herein has been unduly preferring itself as a producer and refiner of crude oil and unjustly discriminating against other producers and refiners of crude oil who are without means of transportation by pipe line. Respondent has no knowledge that the petitioner has never made or had any contract, agreement, arrangement, or understanding whereby any other person, firm, or corporation, has or had any right or interest in said pipe lines or in their use or operation and that petitioner has never established or charged, nor collected or received from itself or any other person, firm, or corporation, any tariff, rates, or charges of any description for or in respect of the transportation of oil or other commodity through its said pipe line or any part thereof, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof.

III. Answering Paragraph III of the petition, respondent has no knowledge of the matters and

things therein alleged, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

IV. Answering Paragraph IV of the petition, this respondent admits that throughout said hearing before the Interstate Commerce Commission the petitioner insisted and objected that it was not subject to the act to regulate commerce or the acts amendatory thereof or supplementary thereto, and that the commission had no jurisdiction over it or its said pipe line, as alleged. Respondent denies that all the facts in the petition alleged were made to appear and were established before the commission, and alleges that a vast number of other facts, conditions, and circumstances were made to appear and were established before the commission which resulted in its order.

Respondent alleges that in addition to the various orders referred to by the petitioner in Paragraph IV as exhibits, the Interstate Commerce Commission, after a full hearing, also filed its report in the premises, a copy of which will be filed upon the hearing hereof. Respondent admits that when the said petition was filed the said order of the Interstate Commerce Commission was entered to become effective September 1, 1912, unless the same was set aside or its enforcement enjoined or otherwise suspended before that day; but that since the filing of the said petition the effective date of the said order has been postponed to November 1, 1912. Respondent admits the alle-

gations contained in Paragraph IV of the petition not herein specifically admitted or denied.

Respondent alleges that at the hearing in the proceeding entitled "In the Matter of Pipe Lines, No. 4199," at which the petitioner herein was represented by its present counsel, it was stipulated and agreed by petitioner through its present counsel that the Interstate Commerce Commission, in the inquiry then being conducted in the said proceeding, might examine into and review the parts of the record and proceedings relating to pipe lines had and taken in a certain cause in equity entitled *United States of America* v. *Standard Oil Company of New Jersey et al.*, commenced in the Circuit Court of the United States, Eastern District of Missouri, Eastern Division, the same being No. 5371 on the docket of said court. The opinion and judgment of the said Circuit Court is reported in 173 Federal Reporter, page 177, and the opinion and judgment of the Supreme Court of the United States on the appeal of the Standard Oil Company of New Jersey et al. from the said judgment of the Circuit Court is reported in the Supreme Court as *The Standard Oil Company of New Jersey et al.* v. *The United States*, 221 United States Reports, page 1. The said parts of the record and proceedings relating to pipe lines and the opinions and judgments in said cause were thus before the Interstate Commerce Commission at the time it entered its said order sought to be set aside and annulled, and the said commission did investigate the

same or such parts thereof as it deemed pertinent in the premises.

V. Answering Paragraph V of the petition, respondent denies the allegations therein contained and each and every part of the same.

VI. Answering Paragraph VI of the petition, respondent admits that the language purporting to be an excerpt from the report of the Interstate Commerce Commission set forth in said paragraph is a true copy of the language used by the commission in its said report. But as to any conclusions of law which the petitioner seeks to draw from the said language of the commission as not sustaining the order of the commission, and as to all other matters and things in the said paragraph alleged, this respondent denies the same and each and every part of the same.

VII. Answering Paragraph VII of the petition, this respondent denies that the pipe lines of the petitioner are solely adapted for, and that their present capacity is only sufficient for, petitioner's own private business, and are being wholly employed at all times in transporting oil required for the petitioner's refinery and the conduct of petitioner's business; and denies that the use of said pipe lines as the same are operated is a private business. Respondent is informed and believes, and upon such information and belief it charges, that any such alleged use of said pipe lines has been undertaken and is sought to be maintained for the purpose of evading, and in violation

of the statute in such case made and provided relating to pipe lines. Respondent denies that any oil carried for others in petitioner's lines would displace a like amount now carried for petitioner itself and required for petitioner's business; and denies that any considerable falling off in supply for petitioner's business would necessarily result in the operation of petitioner's refinery at a higher average cost; and denies that a reduction in the supply of crude oil to petitioner's refinery would also necessitate discharging many of petitioner's refinery employees; and denies that these employees belong to a class of skilled laborers who are limited in number and in great demand; and denies that they would go elsewhere to seek employment with the result that their services would be permanently lost to petitioner with no ready way of replacing them hereafter if former conditions of supply should be restored.

Respondent denies that the use of petitioner's pipe lines by the public will limit the production of said refinery and interfere with the performance of petitioner's contracts with its customers to its damage. Respondent denies that the enforcement of the said order of June 3, 1912, would necessitate a substantial readjustment and rearrangement of petitioner's business, pending which petitioner would be unjustly subjected to embarrassment and serious loss, and denies that compliance with said order compelling it to receive, carry, and transport through its pipe lines oil for the public would cause further great loss to petitioner, because the transportation through its pipe

lines of oils of widely different grades and gravities would produce a large amount of contamination, with resulting substantial depreciation in the quality and value of oil belonging to petitioner and carried through petitioner's lines, which depreciation would cause petitioner great damage.

Respondent alleges that the acquisition of oil wells, the ownership of crude oil and the production thereof, the contracts with other producers for purchases of oil and the marketing and delivery of crude oil, and the refining of crude oil and the sale of the products thereof are all separate and apart from and do not constitute a part of the transportation of oil by pipe line.

Respondent alleges that the buying, selling and storing of crude oil, and the refining of crude oil and the sale of the products thereof produce a profit or occasion a loss independently of pipe line operations and pipe line transportation, and that it is entirely within the power of pipe line companies, and within the power of the petitioner without injury or detriment to its business of buying, selling and storing of crude oil, and the refining of crude oil and the sale of the refined products thereof, and independently thereof, to receive, store, transport by pipe line and deliver the crude oil, of other persons, firms and corporations tendering the same for such purposes.

Respondent alleges that the methods of arranging the operations of a pipe line as a common carrier would be affected only by the degree of uniformity in the quality of the oil placed in the pipes by the

various shippers; that if the oil of different shippers is practically uniform in quality shippers would ordinarily be willing to turn their oil directly into the common stock and receive at destination an average mixture; if, on the other hand, the oils from different wells or from different small pools of a field vary widely in quality, two different methods might be pursued; that is to say, the pipe line company might keep shipments of different qualities separate, or an arrangement might be made for differentials in value of the different grades, so that a shipper putting a given grade of oil into the pipe line and receiving at destination an oil of different quality would either pay to or receive from the pipe line company a sum representing the difference in value. And this respondent alleges that if the oil of the Mid-Continent field is of a quality that for purchasing, transporting, and selling the same it must be kept separate and apart from the other grades of oil, the petitioner herein is compelled to transport oil in that manner for itself, and in discharging its duties and obligations as a common carrier in accordance with the act to regulate commerce it would not be obliged to transport the oil of other producers and shippers in any manner other or different than it transports oil for itself.

Respondent alleges that the Texas Company, a corporation, the largest oil company in the United States excepting the Standard Oil Company and its constituent companies, owns and operates a system of pipe lines from the Mid-Continent field southward

to points in the State of Texas and on the Gulf of Mexico, and is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in compliance with the act of Congress in such case made and provided, and is receiving, transporting, and delivering oils of various grades and qualities through the same pipe without any material mixture when reasonable care is taken, and that it is entirely practicable so to do.

Respondent alleges that the Gulf Pipe Line Company, which operates a pipe line extending from the Mid-Continent field, in the State of Oklahoma, southward to Port Arthur, in the State of Texas, is acting as a common carrier of oil by pipe line in interstate commerce, and has published and filed tariffs in compliance with the act of Congress in such case made and provided, and is receiving and transporting oil through the same pipe and is making deliveries of a like quantity of a like quality of oil so received, and that it is entirely practicable so to do.

Respondent alleges that there are other persons, firms, and corporations in certain of the States east of the Mississippi River acting as common carriers of oil by pipe line in interstate commerce, and have published and filed tariffs in compliance with the act of Congress in such case made and provided, and are receiving, transporting, and delivering oils through the same pipe in manner and form as the Texas Company and the Gulf Pipe Line Company are doing, and that it is entirely practicable so to do.

VIII. Answering Paragraph VIII of the petition, this respondent denies that the said order of the commission made and entered June 3, 1912, should, as to petitioner, be wholly set aside and annulled, and that, pending a final determination said order should, as to petitioner, be suspended and its enforcement and execution enjoined. Respondent admits that unless the order be suspended and enjoined petitioner will be compelled on or before November 1, 1912, to file and publish tariffs and hold itself out to the public as a common carrier. Respondent denies that petitioner will be compelled substantially to readjust its business and denies the petitioner will be compelled to carry on its business at a greater average cost and with a demoralization of its force of skilled employees; and denies that it will be compelled to multiply its pipe lines in order to furnish increased capacity, or to reconstruct its plant at its various delivery stations, and to provide additional tank and pumping stations at terminals, so as to reduce the amount of loss by contamination. Respondent alleges that even though the petitioner may be obliged to incur some expense in providing facilities to receive, transport, and deliver crude oil for other persons, firms, and corporations and to comply with the act to regulate commerce, its outlays in that behalf will be slight as compared with its outlays and expenditures in constructing dummies and other schemes, devices, and arrangements for the purpose of thwarting the act to regulate commerce and evading the provisions thereof, as hereinafter shown.

Respondent admits that there are many shippers desiring to ship oil through the petitioner's said lines who are now prohibited from so doing, but who will be entitled to do so in the event the said order is sustained. Respondent has no knowledge that if the said order be not obeyed by petitioner that many suits for damages are liable to be brought against petitioner by shippers desiring to ship oil through petitioner's said lines, whereby petitioner would be subjected to a multiplicity of suits and to great expense, loss, and damage, and it neither admits nor denies the same; and if the same becomes material upon the hearing it will require strict proof thereof. Respondent denies that the petitioner will suffer irreparable injury should it not be protected from present compliance with the said order of June 3, 1912, in the event that said order be finally set aside and annulled.

IX. Further answering the said petition, this respondent alleges that the crude oil produced in the United States is described by "fields," and they are known as the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, Kentucky, and Tennessee; the Ohio, Indiana, and Illinois fields, covering parts of those States; the Mid-Continent field herein referred to, covering parts of the States of Kansas, Oklahoma, and Indian Territory; the Gulf field, including the Caddo field, covering parts of the States of Louisiana and Texas; and smaller fields in the States of California, Colorado,

Wyoming, Michigan, and Missouri; that the annual products of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), were 209,556,048 barrels, of the value of $127,896,328; that of this total production the Mid-Continent field, from which the petitioner secures its oil, for the year aforesaid, produced 53,157,386 barrels of the value of $31,974,082 or about one-fourth of the quantity and value of the total production of the United States.

Respondent further alleges that The Prairie Oil and Gas Company, a corporation organized under the laws of the State of Kansas, owns and operates a trunk pipe line from the Mid-Continent field eastward across the States of Kansas, Missouri, and Illinois to a point called Griffith, in the State of Indiana, where it supplies crude oil to the large refineries of the Standard Oil Company of Indiana. The said The Prairie Oil & Gas Company, Oklahoma Pipe Line Company, and petitioner herein jointly own and operate a continuous trunk pipe line southward from the Mid-Continent field to Baton Rouge, Louisiana, across the States of Kansas, Oklahoma, Arkansas, and Louisiana. The crude oil originates in the Mid-Continent field and is transported continuously by pipe line by the said three companies to Baton Rouge, Louisiana, where the refinery of the petitioner herein is located. Prior to the year 1906 the capital stock of The Prairie Oil & Gas Company was $10,000,000, of which National Transit Company, until recently, owned $9,999,500; the capital stock of said National Transit Company

was $25,455,200, of which $25,451,650 was owned by Standard Oil Company of New Jersey, and the Standard Oil Company did continue to own, control, and vote the said stock until recently. Respondent alleges that The Prairie Oil & Gas Company, Oklahoma Pipe Line Company, and Standard Oil Company of Louisiana were until recently constituent companies of the Standard Oil Company of New Jersey.

The Standard Oil Company of Louisiana is dependent upon the Mid-Continent field for its supply of crude petroleum, or for a large part thereof, and in order to secure the same at a low cost the said The Prairie Oil & Gas Company, Oklahoma Pipe Line Company, and Standard Oil Company of Louisiana entered into some device, scheme, or arrangement, the exact nature of which is at this time unknown to respondent, wherein and whereby the said three companies named, acting jointly and in concert with each other, arranged to supply such crude oil by means of pipe line to the Standard Oil Company of Louisiana at its refinery at Baton Rouge. By means of the ownership and control of the pipe line by the said three companies, The Prairie Oil & Gas Company is enabled to mine, produce and purchase crude oil in the Mid-Continent field at such prices as it, prompted by the petitioner, dictates, and upon such terms and conditions as it imposes upon the producers of crude oil in the Mid-Continent field, such prices at all times being made for the petitioner, and the said three companies transport

the same by pipe line to Baton Rouge in interstate commerce.

The said The Prairie Oil and Gas Company, Oklahoma Pipe Line Company, and petitioner herein thus unjustly discriminate against other purchasers, shippers, and refiners of crude oil.

The petitioner herein, well knowing that in jointly operating the said continuous and unbroken pipe line it was and is engaged in interstate commerce and was and is subject to the act to regulate commerce, and was and is subject to regulation by the Interstate Commerce Commission, and in order to make it appear that the said pipe line was and is not a continuous and unbroken pipe line through which crude oil flows from the Mid-Continent field to Baton Rouge in interstate commerce, did, by some device, scheme, or arrangement, not in good faith, but for the purpose of attempting to thwart the act of Congress and evade the provisions thereof and regulation by the Interstate Commerce Commission, seek to divide into sections the said continuous and unbroken trunk pipe line, and did, at considerable cost, not as an economical expenditure in the discharge of a legitimate business, but for the purpose aforesaid, erect along the said trunk pipe line a certain dummy station at Ida, an obscure point in the extreme northwestern part of Louisiana near Arkansas, wherein and whereby the petitioner herein, operating jointly with the said other two companies, sought to disturb the continuous flow in interstate commerce of crude oil in the said contin-

uous and unbroken pipe line by emptying the same into a tank at said dummy station and pumping it out again without receiving, refining, selling, delivering, or otherwise disposing of the said crude oil, or any part of the same, at the said obscure point of Ida. In erecting said dummy station at Ida and using the same for the purpose aforesaid, the petitioner herein is imitating and adopting the device previously adopted by the Standard Oil Company of New Jersey at Unionville, Centerbridge, and Fawn Grove.

Respondent is informed and believes, and upon such information and belief it charges, that such device, scheme, or arrangement is a mere sham and pretense; that the crude oil which is shipped by pipe line from the Mid-Continent field to Baton Rouge is destined at the time the same is shipped, and at all times thereafter, to the refinery of the petitioner at Baton Rouge, and that the said device, scheme, or arrangement does not change the continuous flow of the oil in interstate commerce from the time it begins to move from the Mid-Continent field until it reaches its final destination at Baton Rouge, and the said dummy stations sought to be constructed and maintained by the petitioner at the said obscure points are for the sole purpose of attempting to thwart the act to regulate commerce and evade the provisions thereof and regulation by the Interstate Commerce Commission.

Respondent alleges that the cost of transportation of crude oil by pipe line is but a small fraction of the

cost of transportation of crude oil by railroad, and common carriers by railroad are unable to compete with common carriers by pipe line in the transportation of oil; that persons, firms, and corporations engaged in the business of producing and selling crude oil who do not own and operate a pipe line and who are deprived of the use of pipe lines as a means of transportation are without means of transportation except by railroad, and the rates and charges of railroad companies are so high that producers of crude oil without the use of pipe lines may not compete with the producers and sellers of crude oil who have the use of pipe lines; the producers and sellers of crude oil without pipe lines have no alternative but to sell their oil to the producers and purchasers of crude oil who own and operate pipe lines, at such prices as the latter may dictate and upon such terms and conditions as they may impose, which results in the undue preferences and unjust discriminations forbidden by the act to regulate commerce.

Respondent alleges that the petitioner herein, operating jointly and in concert with The Prairie Oil & Gas Company and Oklahoma Pipe Line Company, is combining the business of producing and purchasing crude oil and the refining thereof and the sale of the refined products with the business of transporting the same in interstate commerce, which results in a natural tendency to prefer and discriminate, and in thus combining the business of producing, purchasing, and refining crude oil and selling the refined products with the business of transporting

the same in interstate commerce, and its refusal to divorce the business of transporting crude oil in interstate commerce from the production, ownership, and refining thereof, and thus to avoid the natural tendency to prefer and discriminate, forbidden by the act to regulate commerce, the Standard Oil Company of Louisiana, operating jointly and in concert with the said other two companies, is enabled effectively to and it does control the production and sale of crude oil and the transportation southeastward thereof from the Mid-Continent field and the sale of the refined products and the transportation thereof, to the great prejudice and disadvantage of the other producers of crude oil in the said Mid-Continent field, who are without any outlet or market for their said product except through the petitioner herein acting jointly and in concert with the said other two companies; and that in failing to publish and file its tariffs of rates and charges, and to receive and transport crude oil for the producers of the Mid-Continent field in accordance therewith upon equal terms and conditions with it and with each other, it, acting jointly and in concert with the said other two companies, is enabled to render useless and ineffective for any purposes other than their own the said continuous and unbroken trunk pipe line from the Mid-Continent field to Baton Rouge; and, acting jointly and in concert with the said other two companies, it is enabled to and does compel such producers in the Mid-Continent field to sell the crude oil produced by them at such prices as the petitioner and the said other

two companies may dictate and upon such terms and conditions as they may impose, and in so doing they are making and will continue to make undue preferences and unjust discriminations in favor of and against the communities and persons in the Mid-Continent field, and to prefer each other to the prejudice and disadvantage of other producers and shippers of oil, and avoid regulation by the Interstate Commerce Commission in violation of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and the various acts amendatory thereof and supplementary thereto.

Respondent further alleges that the petitioner, by device, scheme, or arrangement, not as an economical expenditure in the discharge of a legitimate business, and not in good faith, but for the purpose of thwarting the act to regulate commerce and evading the provisions thereof, has sought to exclude the use of its pipe line from producers, shippers, and refiners of oils; and the said trunk pipe line being one continuous and disconnected line, if the petitioner is entitled to operate any part of the same to the exclusion of other producers and shippers of oil, it thereby is enabled to render, and it does render, the whole of the said pipe line useless to the producers and shippers of oil. Respondent alleges that the said three companies have sought to divide and operate the said trunk pipe line in sections for the sole illegal and unlawful purpose, and for no other purpose, of shutting out other producers and shippers of oil from the use of said pipe line or any part of

the same. And the petitioner is now seeking, under the pretense that the part or section from Ida to Baton Rouge of the trunk pipe line from the Mid-Continent field to Baton Rouge is a mere plant facility, to thwart the act to regulate commerce and evade the provisions thereof, to the undue preference to itself and the unjust discrimination against other producers and shippers of oil in the Mid-Continent field. Respondent alleges that at the inquiry in the proceeding entitled "In the Matter of Pipe Lines No. 4199" the matters and things herein by this respondent alleged were made fully to appear to and were before the Interstate Commerce Commission in the inquiry then being conducted in the said proceeding.

Respondent alleges that said The Prairie Oil & Gas Company has filed a petition in this court to annul the said order of the Interstate Commerce Commission, which said petition is numbered 75 on the docket and to which reference is here made. In its said petition The Prairie Oil & Gas Company makes no reference to its trunk pipe line running southward to Baton Rouge, La., though the same is subject to the order of the Interstate Commerce Commission. Respondent is informed and believes, and upon such information and belief it charges, that the petitioner herein, The Prairie Oil & Gas Company and Oklahoma Pipe Line Company, are relying on the case attempted to be made by the petitioner herein to save the said continuous and unbroken pipe line from

the Mid-Continent field to Baton Rouge from the order of the Interstate Commerce Commission, for that if the said order is suspended as to the petitioner, that part or section from Ida to Baton Rouge of said continuous pipe line will remain closed, except to the said three companies, and any compliance or attempted compliance with the said order by the said other two companies will be of no avail to the producers and sellers of crude oil in the Mid-Continent field, who will still be prevented from shipping crude oil by pipe lines to Baton Rouge, and will continue to be forced to sell their crude oil to The Prairie Oil & Gas Company for and on behalf of the petitioner herein, at such prices as the said two companies may dictate and upon such terms and conditions as they may impose.

Further answering the said petition, this respondent alleges that, as shown by Exhibit A attached to the petition, complaint was made to the Interstate Commerce Commission that a large number of common carriers by pipe line, of which the petitioner was one, had established certain rates, classifications, and regulations which were unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and the acts amendatory thereof and supplementary thereto, and that the practices of said carriers in the conduct of business subject to said act were unjust, unreasonable, unjustly discriminatory, unduly preferential and preju-

dicial, and otherwise in violation of the provisions of said act, and that, by reason thereof, the commission instituted an inquiry on its own motion and inquired into the matters and things complained of; that, after a full hearing, the commission notified and required 12 of said large number of companies to file with the commission schedules of their rates and charges for the transportation of oil in compliance with the provisions of the act to regulate commerce.

Respondent alleges that of the said 12 companies, 7 thereof have filed petitions seeking to attack the order of the commission in question, and that the 5 remaining companies are engaged extensively in mining, producing, purchasing, selling, receiving, transporting by pipe line, and delivering crude oil, and are thus engaged in interstate commerce. They and each of them are named as parties to the order of the Interstate Commerce Commission and are by it directed to file their schedules of rates and charges for the transportation of crude oil, in compliance with the provisions of the act to regulate commerce. None of said 5 companies has filed a petition in this court to set aside and annul the said order or for an injunction against the same. This respondent is informed and believes, and upon such information and belief it charges, that each of the said 5 remaining companies in said order named is undertaking to comply with the provisions of the said order, and will comply with the provisions thereof, if the

said order is allowed to remain in force and effect, and will submit itself to the provisions of the act to regulate commerce and to regulation by the Interstate Commerce Commission.

Respondent is informed and believes, and upon such information and belief it charges, that if a temporary restraining order is issued herein, or if the said order of the commission is finally annulled and enjoined, many of the other companies investigated by the commission, which are complying with the provisions of the act to regulate commerce in such a way as not to require further present action on the part of the commission, and the other companies named in the order of the commission which have not filed petitions herein, or some of them, will attempt to divest themselves of their obligations and duties as common carriers by pipe line and avoid regulation as such, and that much chaos and confusion will result, to the great prejudice and disadvantage of the producers, shippers, and refiners of crude oil throughout various States of the United States.

Respondent alleges that The Tide Water Pipe Company (Limited), The Ohio Oil Company, Standard Oil Company of New Jersey, The Prairie Oil and Gas Company, and the petitioner herein, commonly known as "Standard Oil Companies," are all directed by the said order of the Interstate Commerce Commission, which is a joint order, to file with the commission, on or before November 1, 1912, schedules of their rates and charges for the transportation

of oil, in compliance with the provisions of the act to regulate commerce. Each has filed in this court its separate petition for an injunction against the said joint order of the Interstate Commerce Commission and for an order annulling and suspending the same; each of said companies is interested, either directly or indirectly, in the cases of the other of said companies. For the purpose of showing the relation existing among the said companies or between any two or more of them, this respondent prays leave to refer to the petitions and answers and other records and proceedings in said causes, or any of them.

Respondent alleges that the petitioner, a corporation engaged in the transportation of oil by means of pipe lines in interstate commerce, has refused and is now refusing to comply with the provisions of the act to regulate commerce relating to pipe lines, in defiance of the provisions of the said act and in defiance of the order of the Interstate Commerce Commission. The failure of the petitioner to comply with the provisions of the act to regulate commerce, as directed by the order of the Interstate Commerce Commission, is inimical to the general welfare of the people of the United States, contrary to law, and contrary to the public policy of the United States as declared and established by the Congress.

Respondent denies each and every allegation in the said petition contained not herein specifically admitted, denied or otherwise traversed.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioner.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Blackburn Esterline, being duly sworn, says that he is special assistant to the Attorney General of the United States, and that he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes them to be true. He further states that he is authorized to sign the said answer for the United States of America, the respondent in said cause, by the Attorney General of the United States.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 16th day of September, A. D. 1912.

[SEAL.] J. H. MACKEY,
Notary Public, District of Columbia.

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46 In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission, intervening respondent. } In Equity. No. 80.

Answer of the Interstate Commerce Commission. Filed September 16, 1912.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering, says:

I.

This respondent admits that the Standard Oil Company of Louisiana, petitioner herein, is a corporation organized and existing under the laws of the State of Louisiana, with its principal office at Baton Rouge, in said State; that it was incorporated in April, 1909, under act No. 78 of the acts of the Legislature of the State of Lou-
47 isiana; that it is engaged in the transportation of crude petroleum by pipe lines and in the manufacture and sale of the products thereof; that it owns some petroleum lands in the Caddo field, hereinafter described, and produces crude oil; that it buys crude oil from other producers in said field, which is delivered to it at the producers' wells in the manner herein alleged; that it receives from the Prairie Oil & Gas Company crude oil produced in the Mid-Continent field, hereinafter described, which has been purchased by and is transported to its refinery through the pipe lines of the Prairie Oil & Gas Company, the Oklahoma Pipe Line Company, and the said line operated by the petitioner; that the petitioner has constructed, owns, and operates a trunk pipe line for the conveyance of crude oil, which is about 266 miles long, extending from Ida to Baton Rouge, with a lateral line from the Caddo field, and also a gathering pipe-line system in said Caddo field, the order of which is the lateral line last above described; that said pipe lines and refinery have been built by the said petitioner since its organization; that said petitioner has used its said line exclusively for the purpose of transporting crude oil from the fields aforesaid and from its connection with the Prairie Oil & Gas Company to its said refinery, and has not offered, but has refused, to receive oil for transportation other than upon the conditions hereinafter set forth; that the crude oil so transported has been used by it in the conduct of its refining business; that the petitioner has not established or published
48 any tariffs, rates, or charges for or in respect of the transportation of oil through its said pipe lines; and that the petitioner has no right of eminent domain.

This respondent further answering, neither admits nor denies that the petitioner has made or had any contract, agreement, arrangement, or understanding whereby any other person, firm, or corporation has or had any right or interest in said pipe lines or in their use or operation, but this respondent is informed and believes that the refinery and pipe line were established, through the agency of the said corporation, by the Standard Oil Company of New Jersey, and that the capital stock of petitioner's said corporation was intended to be held by the company last named, but by reason of the ruling of the Supreme Court of the United States (221 U. S., 1) the said stock is now held by the stockholders of the said Standard Oil Company of New Jersey.

Respondent further answering, alleges upon information and belief, that the charter of the Standard Oil Company of Louisiana aforesaid authorized the petitioner to construct, maintain, and operate pipe lines for the purpose of transporting crude oil, and that the pipe line of the petitioner was constructed under and subject to an act, No. 39 of the acts of the Legislature of the State of Louisiana for the year 1906, which, among other things, provides that all pipe lines crossing or along highways are to be common carriers, and such pipe lines are given the privileges, as to construction and operation within
49 the State of Louisiana, mentioned in said act. That for the purpose of determining the rights and obligations of the petitioner, which will more fully appear by an inspection of its said charter, the production of said charter or a certified copy thereof at the hearing of this suit is hereby demanded.

Further answering, this respondent alleges, upon information, that the pipe lines maintained and operated by said company at various points cross or are laid along public highways and also cross and are laid upon the right of way of railroad companies that are common carriers and have acquired their right of way by a grant or the power of eminent domain; that said petitioner's pipe line is subject to all the rights vested in the State of Louisiana over its public highways and the rights of way of common carriers acquired as aforesaid.

This respondent also alleges that the Caddo field referred to in the petition herein covers parts of the States of Texas and Louisiana, and that, as this respondent is informed, the gathering pipe lines of the petitioner extend to points in said field located within the State of Texas; that the petitioner is purchasing oil in and transports oil from that part of the Caddo field located in the State of Texas; that its main line extends to and receives oil for transportation from points in the State of Arkansas, as this respondent is informed and believes. That the Prairie Oil & Gas Company and the Oklahoma Pipe Line Company was organized, and are operated in fact,
50 as subsidiary companies of the Standard Oil Company of New Jersey; that they are in fact operated under a unified control; that crude oil is purchased in the Mid-Continent field, hereinafter described, for, and to be transported to, the refinery of the petitioner at Baton Rouge, in the State of Louisiana; that such transportation from the Mid-Continent field to the refinery in the State of Louisiana

is a through shipment, so made and intended from and at the time of its shipment from point of origin in the Mid-Continent field; that the arrangements, in the form of purchases, by the Prairie Oil & Gas Company, its transfer to the Oklahoma Pipe Line Company, and from the Oklahoma Pipe Line Company to the Prairie Oil & Gas Company, and from the last-named company to the petitioner's pipe line were, and are, mere forms for the purpose of evading the Federal law and its jurisdiction over interstate commerce. This respondent denies that said pipe lines of the petitioner are wholly within the State of Louisiana, and that the transportation of crude oil by the petitioner is incidental to its manufacturing and marketing business. But this respondent alleges upon information and belief that the prices paid for the crude oil in the Mid-Continent field and in the Caddo field for use in petitioner's said refinery, and the amount allowed for said crude oil to cover storage and transportation thereof, is fixed, determined, and controlled by, or in the interest of, the Standard Oil Company of New Jersey, whose stockholders own the stock of the petitioner's company.

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II.

Further answering said petition, respondent alleges upon information that the pipe lines of said petitioner are in all respects similar to the pipe lines of other companies, varying only in size; that a compliance with the order in controversy will not interfere with the ability of the petitioner to convey oil to its own refinery, or that a compliance with said order will render it impossible for the petitioner to transport all the oil offered to it for transportation; or that it can not transport crude oil through its pipe lines for several owners or shippers; or that the transportation of different lots or shipments will impair or injure the shipments to the petitioner's refinery; or that it has no rates; or that it can not make rates for such transportation. On the contrary, this respondent alleges that crude oil is transported through pipe lines in independent shipments and may be so delivered at markets or refineries, the oil so delivered being of the same grade as that received for such delivery; that separate rates and charges for the transportation thereof can be made; and that the segregation of shipments and charges by common-carrier pipe lines is of daily and constant occurrence.

III.

This respondent, further answering, admits that the petitioner does not hold itself out as a common carrier nor does it offer to carry oil for the public; but this respondent alleges that, the premises
52 considered, the petitioner is a common carrier because and by reason of the fact that it transports oil by means of pipe lines from one State in the United States to another State in the United States, or performs a part of such transportation, and because of the act of Congress hereinafter referred to, the petitioner is a common carrier under said act.

This respondent denies each and every allegation in said petition in words or to the effect that a compliance with the order in question will unlawfully subject the petitioner to a readjustment and rearrangement of its business; or that a compliance with said order will cause great and irreparable loss to the petitioner; or that it will be compelled to transport through its pipe lines oils of such varying grades or gravities as would result in a substantial depreciation of the oil produced, purchased, and transported by the petitioner through its pipe lines; or that the petitioner can not transport crude oil through its pipe lines for several owners or shippers; or that it can not make rates for such transportation. On the contrary, this respondent alleges that the petitioner, is receiving shipments through connecting pipe lines and delivering single and independent shipments to its refineries, and that the segregation of such shipments, and the making of separate rates and charges therefor, is practicable and of daily occurrence.

53 IV.

This respondent admits and alleges that it made the order complained of, and served the same upon the petitioner; that it conducted the hearing referred to, and that the petitioner appeared at said hearing and then and there submitted a statement of facts substantially as set forth in the petition herein, with oral argument and printed briefs thereon; that after due and full consideration of all the statements of facts, arguments, and briefs submitted by petitioner aforesaid, this respondent, on the 3d day of June, 1912, made, rendered, and published, as required by said act to regulate commerce as amended, its report, findings, and conclusions thereon, and made, entered, and served upon the petitioner the order in controversy; that on July 18, 1912, at the request of the petitioner and other pipeline companies, said order was amended by making the effective date thereof November 1, 1912.

This respondent alleges that said order was made after a full hearing of all the matters and things involved therein had been given and accorded to the petitioner herein and after due consideration of all the statements of facts, arguments, and briefs presented to this respondent by said petitioner, as aforesaid; that said hearing was instituted and conducted by this respondent in all respects as required by the act to regulate commerce as amended; that notice of the hearing and copies of the reports and orders in contro-
54 versy were duly served upon the petitioner; and that this respondent was fully empowered and authorized by the act aforesaid to make and enter said order.

A copy of said report, entitled "No. 4199, In the Matter of Pipe Lines," is attached hereto, marked "Exhibit A," and the same is hereby made a part of this answer. A copy of the said order in question as amended is also hereto attached, marked "Exhibit B," and made a part hereof.

That for a more particular description of the pipe lines of the petitioner, and for the purpose of showing the fields of crude-oil production and the connecting pipe lines east of the Rocky Mountains, a map is hereto attached, marked "Exhibit C," and the same is made a part hereof.

V.

Further answering, this respondent, upon information, says:

That the crude oil produced in the United States is known by "fields," and the fields are designated as the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois fields, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field, in Louisiana and Texas; and other fields in the States of California, Colo-
55 rado, Wyoming, Michigan, and Missouri; that the annual production of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), was 209,556,048 barrels of the value of $127,896,-328. That the pipe lines of the petitioner serve the Caddo field, as shown upon "Exhibit C."

That crude oil produced east of the Rocky Mountains is not much used in its natural state, and its market therefor is limited to the refineries of crude oil; that heretofore the business of refining crude oil and transporting it from the fields of production to the refineries was, to a large extent, transacted under a common management or unified control, the pipe line being called an adjunct of the refinery; that the cost of transportation by means of pipe lines is approximately from 20 to 35 per cent of the cost of transportation by any other instrumentality; that by reason of the premises the producers of crude oil were and are wholly dependent for the sale of the product upon transportation by pipe lines to the refineries, and by reason of their location, as herein described, they could not sell or dispose of their said product except to the refineries controlling pipe lines; that by means of the monopoly of said pipe lines the refineries were able to and did control the output and arbitrarily fix the price of crude oil at the points of production; that the combining of the business of transporting crude oil with the business of refining the same tended to and did create a monopoly and an unreasonable
56 restraint of trade and subjected the producers of crude oil and the consumers of the refined products thereof to great and unreasonable burdens and restraints in their trade and was and is injurious to the public.

That prior to the act of Congress hereinafter set forth the Standard Oil Company of New Jersey, through its pipe lines and through the pipe lines of companies in which it was interested and over which it exercised, by ownership and contract, a dominant control, transported, and in its refineries consumed, a large portion of the crude

oil produced in the Caddo and Mid-Continent fields; that by virtue of its control of pipe-line transportation the said company last named fixed the price of crude oil at the wells of production in the fields aforesaid.

That by reason of the manner of conducting the business of pipe-line transportation as an adjunct or agency of the refineries, the producers of crude oil were and are unable to have their oil transported by these pipe lines as common carriers to competing refineries or markets, nor could the producers select the refinery and markets to which they shipped. That in consideration of the premises the Congress of the United States, in the exercise of its plenary power to regulate interstate commerce for the public welfare, and to prevent a monopoly in crude oil by transportation methods and practices, did by acts approved June 29th, 1906, amended June 18th, 1910, declare, among other things, as follows:

"That the provisions of this act (to regulate commerce)
57 shall apply to any corporation * * * engaged in the transportation of oil * * * by means of pipe lines * * * who shall be considered and held to be common carriers within the meaning and purpose of this act. * * *."

And—

"That every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established."

That by virtue of said acts of Congress all persons, firms, or corporations conducting the business of transporting crude oil from the fields of production to the markets by means of pipe lines—where such transportation is from points in one State to points in another State within the United States—are common carriers within the meaning and purpose of the act to regulate commerce; that the petitioner constructed its line and refinery after the said legislation in 1906; that if and so long as the petitioner engages in the business of transporting oil by means of pipe lines from points in one State to points in another State by the means and instrumentalities aforesaid, it is, by reason of the premises and the provisions of the act
of Congress aforesaid, a common carrier, and is expressly re-
58 quired by said act to file with this respondent schedules of rates and charges for the transportation of oil; that the order in controversy follows, and is strictly within the express requirements of said act of Congress and therefore is a valid order, binding and obligatory upon the petitioner.

VI.

This respondent denies each and every allegation in said petition contained to the effect that the ability of the petitioner to carry the oil which it produces or owns will be unlawfully interfered with by

segregating its transportation business from the business of producing and buying crude oil or by full compliance with the order in controversy.

This respondent also denies the allegation that petitioner can not transport crude oil through its pipe line for several owners or shippers, or that it can not make rates for such transportation. On the contrary, respondent alleges that the petitioner, with many other carriers, is sending shipments, through connecting pipe lines as aforesaid, and delivering single and independent shipments to various stations and refineries upon rates fixed and determined therefor, and that the segregation of such shipments and making separate rates and charges therefor is of constant and daily occurrence by common carriers by pipe lines.

This defendant further denies each and every allegation in said petition contained to the effect or in substance that a compliance with said order will operate to deprive the petitioner of its property
59 without due process of law, or that it will in any degree confiscate or take the property of the petitioner for public uses without due compensation, or that it will in any manner whatsoever deprive the petitioner of its constitutional rights, or any of them, guaranteed by the Constitution of the United States.

This respondent also denies that in the hearing and determination of the matters and things set forth and referred to in the report and order herein complained of—being the order In the Matter of Pipe Lines, No. 4199—this respondent acted arbitrarily or without power or authority in the premises, or that the petitioner did not have a full and fair hearing regarding the matters and things involved in said proceeding and order, or that in any particular whatever this respondent committed any errors or mistakes of law in arriving at its findings and conclusions set forth in said report or in making said order. On the contrary, this respondent alleges that in the hearing and determination of said proceeding, No. 4199, aforesaid, this respondent acted in strict conformity with the requirements of the act to regulate commerce and each provision thereof pertinent to such proceeding and every question involved therein and within its several powers under said act.

And this respondent alleges that in the exercise of its sovereign power over the subject of interstate commerce Congress may prohibit or in any manner whatsoever regulate such interstate commerce without regard to the ownership of the property trans-
60 ported, and all persons, firms, or corporations, while not compelled to engage in such interstate commerce, are when so engaged in duty bound to observe and conform to all laws and regulations for the conduct of such interstate commerce prescribed by Congress or by this respondent under the act to regulate commerce.

This respondent denies that this honorable court has jurisdiction to review or determine the wisdom or expediency of an act of the Congress of the United States involving public policy or public welfare in the regulation of interstate commerce, as prayed in said petition.

and this respondent avers that its findings of fact and its determination set forth in said report and order are binding and conclusive upon the petitioner and all others concerned therein.

This respondent denies each and every allegation in said petition not herein expressly admitted or which is contrary to the facts stated in this answer or in respondent's said report.

All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded or set forth by way of demurrer or motion to dismiss the petition.

61 And having fully answered said petition, this respondent prays to be hence dismissed, with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION.
By CHARLES W. NEEDHAM, *Its Solicitor.*

CITY OF WASHINGTON,
District of Columbia, ss:

C. C. McChord, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answers and knows the contents thereof; and that the same is true as to the matters within the knowledge of the commission and as to the other matters he believes it to be true.

C. C. MCCHORD.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 16th day of September, 1912.

[SEAL.] GEORGE B. McGINTY,
Notary Public.

77 *Notice of motion and affidavit. Filed October 21, 1912.*

In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, petitioner, *vs.* THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission, intervening respondent.	In Equity, No. 80.

Please take notice that, upon the petition of the petitioner herein, duly verified the 27th day of July, 1912, and upon the affidavit of F. W. Weller, duly verified the 19th day of October, 1912, and hereto annexed, we shall move this honorable court, at a session thereof to be held in the Southern Building in the City of Washington, District

of Columbia, on the 24th day of October, 1912, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a temporary injunction restraining in whole the operation, enforcement, and execution of the order of the Interstate Commerce Commission made and entered on the 3rd day of June, 1912, in the "Matter of Pipe Lines, No. 4199," as modified by the order of said commission made and entered on the 18th day of July, 1912, in the same matter, pending the final hearing and determination of
78 this cause, as prayed for in the petition herein; and in the event of this court not coming to a decision on this application prior to the first day of November, 1912, when the aforesaid orders of the Interstate Commerce Commission will, by their terms, become effective, for a temporary stay, in whole, of the operation, enforcement, and execution of said orders until a decision upon this application and the making and service of an order thereon; and for such further or other relief as the circumstances of the case may require and as to the court may seem just.

Dated October 19, 1912.

CHESTER O. SWAIN,
Solicitor for Petitioner.

M. F. ELLIOTT,
JOHN G. MILBURN,
Of Counsel.

TO THE UNITED STATES OF AMERICA:
Hon. WINFRED T. DENISON,
Assistant Attorney General.
Hon. BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

INTERSTATE COMMERCE COMMISSION:
Hon. CHARLES W. NEEDHAM,
Assistant Solicitor.

79 In the United States Commerce Court.

IN EQUITY.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 80.

STATE OF NEW YORK,
County of New York, ss.:

F. W. WELLER, being duly sworn, on his oath deposes and says:

That he resides at No. 4 West Fortieth Street, in the Borough of Manhattan, city of New York; that he has been engaged in the oil business for over twenty-nine years and has during all that time had

experience in the handling and refining of crude oil, the operation of refineries, and the manufacture of petroleum products.

That he is and has been since the incorporation of the Standard Oil Company of Louisiana, the petitioner herein, in 1909, president of said company, and that as such president he has had principal charge of its business and has been familiar with the various departments thereof, including its pipe line, its refineries, and its marketing methods and facilities.

80 That said petitioner owns and operates the refinery, producing wells, and pipe line described in Paragraph II of its petition herein, which said paragraph is hereby referred to and made a part of this affidavit.

That the theoretical capacity of petitioner's pipe line is about 11,000 barrels per day, which, of course, is subject to deduction for occasional shutdowns due to accidents to the line or machinery or some similar cause. That during the first nine months of the year 1912, the total amount of crude oil transported through this pipe line showed a daily average of approximately 10,200 barrels, which represents practically the capacity of the line under actual working conditions. That the total amount of crude oil required daily for petitioner's refinery is about 10,000 barrels, and that such requirement is constantly increasing with the progress of said refinery toward completion.

That it will be impossible to carry through petitioner's pipe line any crude oil belonging to others than petitioner without displacing a like amount of crude oil required by petitioner, and that such displacement would work a great detriment to the continuous and successful operation of petitioner's refinery and the conduct of its business. Should crude oil belonging to others than petitioner be tendered to said pipe line for transportation, one of two results would follow: Either the amount carried for petitioner itself would, as aforesaid, be diminished, or it would be necessary to increase the capacity of said pipe line.

Deponent further says that in the event that said petitioner were compelled to operate its pipe line as a common carrier and to transport crude oil for persons other than said petitioner, the damage to petitioner and its business would be irreparable for the following reasons:

I. Since the petitioner's requirements and the capacity of its pipe line are substantially balanced, any crude oil transported through said line for persons other than petitioner would necessarily
81 displace a like amount of oil which would otherwise be delivered to petitioner. This would entail lost capacity of petitioner's plant and a consequent increased average cost of production.

II. The efficient and economical operation of a refinery requires that it be operated continuously, day and night, for three hundred and sixty-five days in the year, and that it be assured of an absolutely constant supply of crude oil. If, therefore, petitioner's pipe line were subject to be called upon by other persons to carry crude oil

for them, at any time, in quantities as to which not even a guess can be hazarded, petitioner would never be able to know definitely what amount of crude oil could be at any time transported for its own use through its pipe line to its refinery, and in consequence the ability of the company to make definite contracts for the delivery of its refinery products would be seriously impaired; nevertheless, the plant would have to be maintained for the maximum that might be received at any time and would be idle during the period of reduced supply. Such interrupted running would be very uneconomical in both fixed charges and labor, and furthermore would seriously damage the stills and other equipment which must be kept running or suffer rapid deterioration.

III. Petitioner has in its employ many process men who have been developed by years of training and are skilled in handling particular branches of the work, and these men could not be held in petitioner's service if the work were not continuous. Since the supply of such men is limited, it would be practically impossible for petitioner to replace men who were thus lost. Shortage of experienced men or changes in personnel would result in great loss of efficiency of the plant, variation in yields and quality of products, together with uneconomical and unskillful methods in the department affected. Furthermore, the plant would be subjected to great danger of fire and other damage which would be caused by the breaking in of inexperienced men.

82 IV. Interrupted running of the refinery occasioned by lack of line capacity for petitioner's use would hamper petitioner's export business, both of crude oil and of the manufactured products. The arrival and despatch of steamers and other carriers would be seriously disarranged, with the result that petitioner would be subjected to great loss by reason of demurrage charges. In addition thereto, the petitioner's customers would find it necessary to use a larger tonnage to do the same amount of business, which fact would seriously impair petitioner's ability to make sales.

In the event that petitioner, while maintaining its own deliveries of crude oil to meet the requirements of its own business, were obliged to carry oil tendered by others, it would be necessary to construct one or more additional pipe lines from the northern end of its system to the terminus at Baton Rouge, and to build at various points additional tankage and additional pumping stations with their attendant machinery. While it is not possible to estimate accurately what the cost of such extension would be, the following statements may be made: To lay one additional pipe six inches in diameter from the northern end of the system to Baton Rouge, a distance of about two hundred and sixty-six miles, would cost about $4,500 per mile, irrespective of additional right of way, tankage, and pumping equipment. That each additional tank required to increase the capacity of the system or to meet the problem of contamination, hereinafter discussed, would cost from ten to twelve thousand dollars. That the operation of the additional line would require the construction of

adequate pumping plants at a cost of approximately six hundred thousand dollars. It would also be necessary to construct at the Baton Rouge terminus of the line a delivery station comprising one or more tanks for each grade of oil carried, in which oil transported for other shippers could be stored until removed by its owners. That there are at least four different grades of oil which might be
83 tendered by other persons for transportation through petitioner's pipe line, all of which must in practice be kept separate in the pipe lines as far as practicable and must be handled separately. Each of these grades would, therefore, require one or more separate delivery tanks at the terminus. That deponent estimates the cost of the extension above outlined at upwards of $2,000,000.

That, owing to the number of grades and kinds of crude oil which probably would be tendered to petitioner for transportation through its pipe line, were petitioner compelled to operate said line as a common carrier, a large additional amount of contamination by mixture of the different kinds of oil would result, and the serious loss entailed thereby would fall upon petitioner. One of the grades of crude oil at present produced in the Caddo field which probably would be tendered to petitioner for transportation is not and never has been carried through petitioner's pipe line, being of such consistency that its transportation would occasion a reduction of fully 65 per cent in the carrying capacity of the line.

Deponent further says that he has read carefully the answer of the Interstate Commerce Commission, intervening respondent in this cause, and as to such answer he deposes and says as follows:

Answering the paragraph or subdivision of said answer numbered "I":

Deponent denies upon information and belief that said petitioner is engaged in the transportation of crude petroleum by pipe lines.

Deponent says that petitioner purchases from The Prairie Oil & Gas Company, for delivery f. o. b. petitioner's tanks at Ida, in the State of Louisiana, crude oil produced in the Mid-Continent field, and that such oil is delivered into petitioner's said tanks at Ida by The Prairie Oil & Gas Company and thereupon becomes the property of petitioner; that petitioner has no knowledge of the point of origin of said oil except that it is Mid-Continent oil, and has no con-
84 trol in any way, directly or indirectly, over the manner or method in which the oil is delivered to it in its tanks.

Deponent denies, upon information and belief, that the pipe line of petitioner was constructed under or subject to an act, No. 39 of the acts of the Legislature of the State of Louisiana for the year 1906; and further denies, upon information and belief, that said act provides that all pipe lines crossing or along highways are to be common carriers, and that petitioner's pipe lines are given or enjoy any privileges under said act. Deponent alleges that, on the contrary, petitioner has never qualified under Section VII of said act and has never filed with the secretary of state a resolution of its board of directors consenting or agreeing that said corporation should be a

common carrier of either gas or oil, or both, or that it should and would transport either product for all persons or corporations up to the capacity of its pipe line or otherwise, and that petitioner has never been entitled to nor has it exercised or assumed to exercise, under said statute, any of the rights or privileges therein mentioned.

Deponent admits that the petitioner's pipe line at various points crosses public highways and also crosses and is laid upon the right of way of railroad companies that are common carriers; but alleges, upon information and belief, that such facts are wholly immaterial to any issue in this cause; and, further, that it is wholly immaterial whether or not the portion of the right of way of railroad companies so used by petitioner was acquired by such railroad companies by a grant or the power of eminent domain; and deponent alleges, upon information and belief, that no right vested in the State of Louisiana in any way affects the right of petitioner to maintain or operate its pipe line, as said pipe line is and always has been located, maintained, and operated over public highways or on the
85 rights of way of common carrier railroads, or affects the conditions under which petitioner has acquired or exercises such right.

Deponent denies that the gathering pipe lines of petitioner or any other pipe lines of petitioner extend to points located within the State of Texas, and that petitioner in purchasing oil in or transporting oil from the State of Texas, and further denies that its main or any other line extends into the State of Arkansas; and alleges that the petitioner owns no property of any nature in either the States of Texas or Arkansas.

Deponent neither admits nor denies the allegations as to the organization of The Prairie Oil & Gas Company and the Oklahoma Pipe Line Company; but denies, upon information and belief, that they are in fact operated as subsidiary companies of the Standard Oil Company of New Jersey or under a unified control.

Deponent denies that petitioner purchases oil in the Mid-Continent field for or to be transported to its refinery, and that the transportation thereof from the Mid-Continent field to petitioner's refinery is a through shipment.

Deponent denies that petitioner is a party to any arrangement which is a mere form for the purpose of evading the Federal law or its jurisdiction over interstate commerce.

Deponent alleges that all of the capital stock of the petitioner, except qualifying shares, is owned by the Standard Oil Company of New Jersey and that the officers and directors of said Standard Oil Company of New Jersey are occasionally consulted by the officers of petitioner in matters pertaining to petitioner's business.

With reference to the paragraph or subdivision of said answer numbered "III":

Deponent denies, upon information and belief, that petitioner is a common carrier, and denies that it transports oil by means of pipe

line from one State in the United States to another State in the United States, or that it performs a part of such transportation.

86 With reference to the paragraph or subdivision of said answer numbered "IV":

Deponent denies that the map therein referred to, marked "Exhibit C," correctly shows the pipe line of petitioner.

With reference to the paragraph or subdivision of said answer numbered "V":

Deponent alleges that large quantities of crude oil produced east of the Rocky Mountains are used in its natural state and do not go through any refining process.

Deponent further denies that the producers of crude oil were or are wholly dependent, for the sale of the product, upon transportation by pipe lines.

Deponent alleges that petitioner has never been an important factor in the crude-oil market in the Mid-Continent field, and that its average purchases of oil produced in said field have never exceeded five per cent of the total production; that petitioner's production and purchase of crude oil in the Caddo field up to the present time have not averaged more than one-third of the total production of said field, and that such purchases as the company has made there have been made in active competition with the purchasers of the other two-thirds of the production.

Deponent further denies that the fact that petitioner has transported crude oil and refined the same has tended to create or has created a monopoly or an unreasonable restraint of trade, or subjected the producers of crude oil and the consumers of the refined products thereof to great and unreasonable burdens and restraints in their trade, or was or is injurious to the public.

Deponent further alleges that the petitioner has been incorporated and its business has been developed since the enactment of the act of Congress, approved June 29th, 1906, and denies that any of the allegations as to monopoly or restraint of trade contained in

87 said paragraph have any application to petitioner or are relevant to any issue in this cause.

Deponent denies, upon information and belief, that so far as the transportation of crude oil through its pipe line is concerned, it is engaged in interstate commerce, that the act of Congress above referred to has any application to such transportation, and that the order of the Interstate Commerce Commission in controversy, so far as it purports to be applicable to this company, is within the requirements of said act of Congress or is a valid order, binding or obligatory upon petitioner.

With reference to the paragraph or subdivision of said answer numbered "VI":

Deponent denies that petitioner is sending shipments of crude oil through connecting pipe lines and that it is delivering any shipments whatever upon rates fixed or determined therefor.

Deponent further says that he has read carefully the answer of the United States of America, respondent in the above-entitled cause, and that in answer to the allegations of said answer, he deposes and says as follows:

With reference to the paragraph or subdivision of said answer numbered "I":

Deponent denies that the principal business of the petitioner is or ever has been the transportation of oil by means of pipe lines, and again states that the principal business of the petitioner is and always has been the manufacture and sale of petroleum and its products, and that the petitioner is not engaged in the business of transporting oil by means of pipe lines.

Deponent further says that it is impossible to state what the volume of business represented by petitioner's pipe line is, for the reason that the pipe line is but a mere adjunct to petitioner's refinery, and that no charges for carrying oil through it are made in any
88 way, directly or indirectly, and that the pipe line has no income whatever derived from its operation. It may be stated, however, that the petitioner's investment in its pipe line constitutes less than 20 per cent of its total investment in its business. Deponent denies, upon information and belief, in so far as the proposition is a question of law, that petitioner's business is a public business; and avers unqualifiedly, in so far as it is a question of fact, that on the contrary the said business is a private business.

Referring to the paragraph or subdivision of said answer numbered "II":

Deponent denies that by means of its pipe line or the power wielded by it in the use of the same, the petitioner is enabled to, or does in any manner, control the supply or demand of crude oil in the Caddo field; and deponent again avers his statement hereinbefore made with reference to the amount of business done by petitioner in the Caddo field.

Deponent denies that petitioner and The Prairie Oil & Gas Company operate jointly in any way, except that petitioner buys and receives from The Prairie Oil & Gas Company, and the Prairie Oil & Gas Company sells and delivers to petitioner, in the State of Louisiana, crude oil produced in the Mid-Continent field.

Deponent admits that Mid-Continent oil purchased from The Prairie Oil & Gas Company is brought to and delivered into petitioner's tanks at Ida, in the State of Louisiana, through pipe lines of The Prairie Oil & Gas Company; but avers that from and after the time of such delivery, such oil is and has been disposed of by petitioner at its will, although, as a matter of fact, and naturally enough, the bulk of the oil ultimately goes to petitioner's refinery at Baton Rouge. Large quantities of said oil have, however, been sold by petitioner at points north of Baton Rouge and have never gone to the refinery.

Deponent denies that petitioner's pipe line is only a part
89 or section of a trunk line extending from the Mid-Continent field to Baton Rouge, and that if the same were disconnected from other lines to the north would be worthless or of no value; and deponent avers that at the present time seventy per cent of the pipe-line capacity is utilized in moving crude oil from the Caddo field located within the State of Louisiana.

Deponent denies that any part of petitioner's pipe line runs along any public streets or highways in the State of Louisiana. Deponent alleges that petitioner has duly and legally obtained permission to cross public highways and streets at various points in the State of Louisiana, from the persons empowered to grant such permission; but denies that the utilization of such permission for petitioner's private business is contrary to any right which the public has in said streets or highways or the use thereof.

Deponent admits that at various points petitioner's pipe line is laid upon, along, or across the rights of way of railroad companies engaged in interstate commerce; but alleges that the right so to lay and maintain its line was purchased from the railroad companies for a large and adequate compensation, and, upon information and belief, that the railroad companies had a perfect right to grant such permission.

Deponent denies, upon information and belief, that such use is to the detriment of the public or contrary to the purposes or uses for which the railroad right of way was acquired, and that the use of the public thereof is in any way excluded.

Deponent denies that the use by the petitioner of its pipe line in its private business is or has been for the purpose of evading or in violation of the act to regulate commerce. Deponent denies, upon information and belief, that petitioner is or has been violating the act to regulate commerce, or is or has been unduly preferring itself as a producer or shipper of oil or unjustly discriminating against other producers or shippers of oil in violation of the act to regulate commerce or of any other law.

90 Answering paragraph or subdivision "IV" of said answer:

Deponent denies, upon information and belief, that any facts, conditions, or circumstances other than those alleged in the petition herein which were made to appear or were established before the commission justified the making of its order.

Answering paragraph or subdivision "IX" of said answer:

Deponent denies that The Prairie Oil & Gas Company, Oklahoma Pipe Line Company, and this petitioner jointly own or operate a continuous trunk pipe line from the Mid-Continent field to Baton Rouge, Louisiana, and, upon information and belief, that crude oil originating in the Mid-Continent field is transported continuously by pipe line to Baton Rouge.

Deponent avers, contrary to the allegations of said answer, that the petitioner at the present time is dependent upon the Mid-Con-

tinent field for only about thirty per cent of its supply of crude petroleum; and denies that for the purpose of securing the same at a low cost or any other purpose or in any manner petitioner has entered into any device or scheme or improper or illegal arrangement with The Prairie Oil & Gas Company and the Oklahoma Pipe Line Company, or either thereof. Deponent avers, contrary to the allegations of said answer, that the petitioner and The Prairie Oil & Gas Company are wholly distinct and separate corporations, and denies that petitioner prompts or in any way influences The Prairie Oil & Gas Company with reference to the business between The Prairie Oil & Gas Company and the producers of crude oil in the Mid-Continent field; and avers that the only business relations between the two concerns are the purchase from time to time of needed deliveries or batches of oil at Ida.

Deponent denies, upon information and belief, each and every allegation contained on pages 20 and 21 of said answer
91 with reference to the joint operation of a pipe line in interstate commerce, any device, scheme, or arrangement, not in good faith entered into by petitioner, and an yimproper, unjustifiable, or illegal act done or sought to be done by petitioner; and deponent denies that the station at Ida is in any sense a dummy station, and avers that it is a complete pumping station and is absolutely necessary to the operation of petitioner's pipe line.

Deponent denies that petitioner participates in any transaction in reference to the purchase or transportation of crude oil which results in any undue preference or unjust discrimination forbidden by the act to regulate commerce.

Deponent denies each and every allegation contained on pages 22, 23, and 24 of said answer in reference to any joint or concerted operation between the petitioner and The Prairie Oil & Gas Company in the Mid-Continent field.

Deponent denies that petitioner has devoted its own pipe line to the purposes of its own business by reason of any device, scheme, or improper or illegal arrangement, or not in good faith, or for the purpose of thwarting the act to regulate commerce or to evade the provisions thereof; and denies further that petitioner has cooperated with The Prairie Oil & Gas Company or the Oklahoma Pipe Line Company, or either thereof, for any illegal or unlawful purpose.

Deponent denies, upon information and belief, that the matters and things alleged in said paragraph "IX" of said answer were made to appear to or were before the Interstate Commerce Commission in the inquiry conducted in the proceeding entitled "In the Matter of Pipe Lines, No. 4199."

Deponent denies, upon information and belief, that petitioner is a corporation engaged in the transportation of oil by means of pipe lines in interstate commerce or is subject to the act to regulate commerce relating to pipe lines; and further denies that the fact
92 that the petitioner has not complied with the provisions of the act to regulate commerce is in any way inimical to the

general welfare of the people of the United States or contrary to law, or contrary to the public policy of the United States.

F. W. WELLER.

Sworn to before me this 19th day of October, 1912.

[SEAL.] (Sig'd) LEWIS G. DURYEA,
Notary Public, Kings County.

Certificate filed in New York County.

93 *Journal entries.*

No. 75.—The Prairie Oil & Gas Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 76.—The Uncle Sam Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 77.—Robert D. Benson et al., petitioners, vs. The United States of America, respondent; Interstate Commerce Commission et al., interveners.

No. 78.—The Ohio Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 79.—Standard Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 80.—Standard Oil Company of Louisiana, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

Proceedings of October 29, 1912.

It was announced by the court that these causes would be heard together. Thereupon all of said causes came on for hear-
94 ing upon the applications for a preliminary injunction and No. 75 upon the motion of the United States to dismiss, and the arguments of counsel were commenced, Mr. W. S. Fitzpatrick, Mr. W. I. Lewis, and Mr. John G. Milburn appearing on behalf of the petitioners.

Proceedings of October 30, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were continued, Mr. John G. Milburn appearing on behalf of the petitioners; Mr. Albert L. Wilson on behalf of the Uncle Sam Oil Company, petitioner in No. 76; Mr. Blackburn Esterline on behalf of the United States; and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

Proceedings of October 31, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were concluded, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission; Mr. Winfred T. Denison, Assistant Attorney General, on behalf of the United States; and Mr. John G. Milburn on behalf of the petitioners. Thereupon counsel for the United States was granted leave to file an affidavit, said affidavit to be first submitted to Mr. Milburn.
95 Mr. Milburn, of counsel for the petitioners, was granted leave to file a brief on monopoly within one week, and opposing counsel were given one week thereafter in which to file briefs in reply. Thereupon said causes were taken under advisement by the court.

96 In the United States Commerce Court.

IN EQUITY.

STANDARD OIL COMPANY OF LOUISIANA, petitioner, *v.* THE UNITED STATES OF AMERICA, respondent; Interstate Commerce Commission, intervening respondent.	No. 80.

Agreed statement for purposes of the motion for preliminary injunction. Filed November 15, 1912.

For the purposes of the motion for preliminary injunction, and without prejudice to the right of either party to modify by evidence on any final hearing, the following facts shall be taken as true:

At Ida, on the Louisiana side of the Louisiana-Arkansas line, the Standard Oil Company of Louisiana owns a tract of land on which it has located storage tanks, a pumping station, and discharge-pipe lines. F. o. b. its tanks at this point, the Standard Oil Company of Louisiana purchases and receives from the Prairie Oil & Gas Company and takes title to crude oil produced in the Mid-Continent field, which oil is pumped by the Prairie Oil & Gas
97 Company from its pipe line into the said tanks of the Standard Oil Company of Louisiana. One tank at a time is used for this purpose, and as soon as said tank is filled the pumping is, as to this tank, discontinued, and the oil arriving in the pipe line is diverted into another tank. The full tank is then gauged by representatives of both companies and the pumping station of the Standard Oil Company of Louisiana thereafter proceeds to draw the oil out of the tank, pass it through the pumping station, and pump it south toward the refinery at Baton Rouge.

There is no refinery at Ida, nor any town of size or commercial importance. Its population is not over 200. No oil is used at that place.

In this case the pipe line of the Standard Oil Company of Louisiana does not cross the State line into Arkansas.

Seventy per cent of the oil carried through the Standard Oil Company of Louisiana's pipe line is produced in the Caddo field. Although the Caddo field does extend into Texas, the Standard Oil Company of Louisiana owns no wells outside the State of Louisiana and purchases no oil from other persons except such as is delivered to it in tanks owned by such purchasers within said State. From its own tanks at its own wells and from the tanks of the producers from whom it purchases the Standard Oil Company of Louisiana gathers oil in its gathering system and pumps it on through a lateral
98 line into the line running from Ida to Baton Rouge, the junction point being some miles south of Ida.

The lines of the Standard Oil Company of Louisiana are located wholly within the State of Louisiana.

WINFRED T. DENISON,
Assistant Attorney General for the United States.
CHESTER O. SWAIN,
For the Standard Oil Company of Louisiana.

NOVEMBER 7, 1912.

99 *Opinion. Filed March 12, 1913.*

United States Commerce Court.

October session, 1912.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, INTERVENER. } No. 75.

THE UNCLE SAM OIL COMPANY, PETITIONER,
v.
SAME. } No. 76.

ROBERT D. BENSON ET AL., PETITIONERS,
v.
SAME. } No. 77.

THE OHIO OIL COMPANY, PETITIONER,
v.
SAME. } No. 78.

STANDARD OIL COMPANY, PETITIONER,
v.
SAME. } No. 79.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
SAME.
No. 80.

100 *On motions for preliminary injunctions.*

(For opinion of the Interstate Commerce Commission see 24 I. C. C. Rep., —.)

Mr. W. S. Fitzpatrick, with whom Mr. J. B. F. Cates, Mr. L. W. Keplinger, and Mr. C. W. Trickett were on the brief, for the Prairie Oil and Gas Company.

Mr. Albert L. Wilson, for the Uncle Sam Oil Company.

Mr. W. I. Lewis, with whom Mr. Arch. F. Jones, Mr. R. R. Lewis, and Mr. Clarence A. Farnum were on the brief, for the Tide-Water Pipe Company, Limited.

Mr. John G. Milburn, with whom Mr. Frank L. Crawford and Mr. Walter F. Taylor were on the brief, for the Ohio Oil Company.

Mr. John G. Milburn, with whom Mr. M. F. Elliott and Mr. Chester O. Swain were on the brief, for Standard Oil Company and Standard Oil Company of Louisiana.

Mr. Winfred T. Denison, Assistant Attorney General, with whom Mr. Thurlow M. Gordon, Special Assistant to the Attorney General, was on the brief, and Mr. Blackburn Esterline, Special Assistant to the Attorney General, for the United States.

Mr. Charles W. Needham, for the Interstate Commerce Commission.

Before Knapp, presiding judge, and Hunt, Carland, and Mack, judges.

101 March 11, 1913.

KNAPP, *Presiding Judge:*

By an amendment approved June 29, 1906, which took effect sixty days thereafter, the provisions of the act to regulate commerce were extended and made to apply "to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this act * * *."

Subsequently, in June, 1911, the Interstate Commerce Commission on its own motion instituted a proceeding, "In the Matter of Pipe Lines," No. 4199, to which numerous companies using pipe lines for the transportation of oil, including the several petitioners above named, were made parties respondent. The stated purpose of this inquiry was to determine whether any of the rates, regulations, or practices of the respondents, or either of them, were unreasonable or discriminatory, or otherwise in violation of the act, and to ascer-

tain the manner and method in which their business was carried on, matters respecting which, as the order recites, complaint had been made to the commission.

During the following months an extended investigation appears to have been conducted, which presumably disclosed, among other things, the principal facts relating to the location, extent,
102 ownership, and activities of the various pipe lines of the respondent companies. After the taking of testimony was concluded, and in the order or notice fixing May 10, 1912, as the date for final hearing, certain questions of law were propounded by the commission, and it is assumed that these questions were discussed when the matter was argued and submitted. Afterwards, and on June 3, 1912, the commission made and filed its report of the proceeding, as required by law, and thereupon entered an order in and by which 13 of the respondents therein specified, including the above-named petitioners, were notified and required "to file with this commission, on or before the 1st day of September, 1912, schedules of their rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce." (The effective date was subsequently postponed for a period which has not yet expired.)

Shortly thereafter the above-entitled suits were brought to set aside and annul this order, the several petitioners basing their right to such relief upon grounds which will presently be stated. The United States filed an answer to each suit, but later withdrew its answer in No. 75, The Prairie Oil and Gas Company case, and substituted a motion to dismiss for want of equity. In No. 77 the Wellsville Refining Company intervened by leave of the court and prayed that the petition be dismissed, and in No. 78 there was a like intervention by the Cornplanter Refining Company. The Inter-
103 state Commerce Commission answered at length in each of the cases. Upon the verified petitions filed by them, respectively, and supporting affidavits the petitioners applied for injunctions pendente lite, and the cases have been argued and submitted on such applications.

While each case differs from the others in various particulars, and perhaps in respects which would be important in other connections, the fundamental questions here involved are common to them all and arise out of facts which are practically undisputed.

The crude or natural oil produced in the United States is found in various sections of the country, described as "fields," which are of comparatively limited area and located at considerable distances from each other. The most important of these appear to be the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois fields, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering

parts of the States of Louisiana and Texas; the Caddo field in Louisiana and Texas, and other fields in the States of California, Colorado, Wyoming, Michigan, and Missouri. In each of these fields there are hundreds and perhaps thousands of wells from which the crude oil is obtained, and the aggregate output amounts to upward of two hundred millions of barrels per annum. The oil in its natural state is not well suited to domestic use, and there-
104 fore requires a process of refining to prepare it for the needs of consumers. It is inferable from the record that the business of refining crude oil can be profitably conducted only on a large scale and by means of somewhat costly plants, and therefore the number of refineries is comparatively small. These refineries are located for the most part at considerable distances, and sometimes at great distances, from the fields of production, and the customary method of transporting the crude oil to the refinery is by means of pipe lines. The cost of transporting by this method is said to be not more than 25 to 35 per cent of the cost by any other agency, and it results that practically all the crude oil produced is moved by pipe lines to the various refineries. There are many thousands of miles of pipe lines now in use, and their operations are correspondingly extensive. Some of these pipe lines, aggregating a large mileage, are admittedly subject to public regulation, because their owners are public service corporations engaged in the business of common carriers; but many of them belong to private companies, which use them only in the conduct of their private business. The private lines in most instances are owned or controlled by the refineries to which they transport crude oil and which they exclusively serve. The construction of pipe lines, such as are owned by these petitioners, involves a large outlay of capital, and few producers of the crude article are able to provide themselves with such a facility for marketing their output. Consequently, and because the
105 cost of railroad transportation is prohibitive, the great majority of oil producers find it to their interest to sell at the wells to the owners of pipe lines, and, as a practical matter, may have no other alternative. For this reason it comes to pass that these private pipe-line companies transport not only the oil supplied by their own wells, but also the much greater amount purchased by them from other producers.

In the view we take of the questions involved in this controversy, and the grounds upon which we rest our decision, it is deemed unnecessary to describe the pipe-line industry in greater detail or to add anything more in this connection than a brief statement respecting the several petitioners.

The Prairie Oil and Gas Company is a corporation organized in 1900 under the laws of the State of Kansas. It owns and operates a system of pipe lines consisting of gathering lines in the Mid-Continent field, in the States of Kansas and Oklahoma, a trunk line from that field to Griffith in the State of Indiana, where it connects with the Indiana pipe line, and a trunk line in the State of Arkansas, con-

necting the Oklahoma pipe line with the pipe line of the Standard Oil Company of Louisiana. This company has no refinery, and its business is confined to producing, purchasing, and selling crude oil, which it delivers to its customers by means of the pipe lines described. Its own wells yield only about 12,000 barrels per day and it purchases approximately 70,000 barrels per day on the average. Its trunk lines are about 860 miles in length, of which some 300 miles are lo-
106 cated on the right of way of the Atchison, Topeka & Santa F[illegible] Railway Company under contract arrangement with that company.

The Uncle Sam Oil Company is a corporation organized in 1905 under the laws of the State (then Territory) of Arizona. It owns and operates a pipe line from its wells in the State of Oklahoma to its refinery at Cherryvale, Kans. The extent to which this company purchases oil from other producers, if it engages in that business at all, does not appear from the record.

Robert D. Benson et al. are the members of a partnership, organized in 1878 for the term of 20 years and reorganized in 1898 for a further term of 20 years, in compliance with the laws of the State of Pennsylvania, and doing business under the name of the Tide-Water Pipe Co. (Ltd.). This company transports oil from the Appalachian field in the western part of Pennsylvania, and also oil received through connecting lines from other fields, to the Tide-Water Oil Co. refinery at Bayonne, in the State of New Jersey. It also owns and operates branch lines in New York and Pennsylvania, and a line extending from Stoy, Ill., through the States of Illinois, Indiana, Ohio, and Pennsylvania. The greater part of the crude oil transported by this company is purchased from other producers. The lines which it owns and the Bayonne refinery which it serves are under common or unified control.

The Ohio Oil Co. is a corporation organized in 1887 under the laws of the State of Ohio. It owns and operates pipe lines in the
107 States of Ohio, Indiana, and Illinois, and also leases and operates a line from Negley, Ohio, to Centerbridge, in the State of Pennsylvania. It is an extensive purchaser of crude oil from other producers.

Standard Oil Company, designated, for convenience, "Standard Oil Company of New Jersey," is a corporation organized in 1882 under the laws of the State of New Jersey, and its principal pipe lines are the following: (*a*) A line extending from Unionville, in the State of New York, near the boundary line of New Jersey, through the latter State to its refineries at Bayonne; (*b*) a line from Centerbridge, in the State of Pennsylvania, near the boundary of New Jersey, through the latter State to its refineries at Bayonne and Bayway; and (*c*) a line from Fawn Grove, in the State of Pennsylvania, near the boundary of Maryland, through the latter State to its refinery at Baltimore. The record indicates that much the greater part of the oil transported through these lines, and perhaps all of it, is oil which this company has purchased.

The Standard Oil Company of Louisiana is a corporation organized in 1909 under the laws of that State. It owns and operates a refinery at Baton Rouge and a trunk line extending thereto from the town of Ida, near the northern line of Louisiana, and also gathering lines in the Caddo field, in the States of Louisiana and Texas. It purchases a considerable part of the crude oil which its lines transport.

None of the petitioning corporations is organized or derives
108 any of its corporate powers from laws of the State of its creation under which common carrier or other public service corporations are organized, but each of them was formed and has always conducted its operations under and in compliance with State laws which relate to private as distinguished from public business. With certain alleged exceptions, which will be hereafter noticed, it is not claimed that either of the petitioners is under any statutory or legal obligation, other than the amendment in question, to perform the duties or otherwise act in the capacity of a common carrier. None of the petitioners possesses the right of eminent domain or has acquired any part of its property or rights of way by condemnation; nor has either of them received a franchise from any State, municipal, or local government, though each of them has in many instances laid its pipe lines across or along public streets and highways by permission or consent of the local authorities. None of them has ever held itself out as a common carrier or in fact carried oil for others, but each of them has carried only such oil as it produced from its own wells or purchased from other producers, and which it owned when the transportation took place. The pipe lines of petitioners are laid on private rights of way secured by purchase or lease, except that some of them for short distances, and one of them for a distance of some 300 miles, are laid upon and along the rights of way of certain railroads under some contract arrange-
ment with such railroads. In short, so far as their legal status
109 is fixed by the laws of the States of their creation, and so far as their acts and attitude could make them such, all the petitioners carry on a private business, at least in the sense that they transport only their own oil and have always refused to transport for others; and all of them have evidently sought and claimed to so conduct their operations as to avoid any public activity which might subject them to public regulation. Some other facts relating to certain of the petitioners will be referred to in the following discussion of the legal questions to be decided.

The petitioners rely upon two propositions:

1. That the amendment of 1906 applies only to such pipe-line companies as were common carriers when the amendment was adopted or should thereafter become such by voluntary action or be so declared in some judicial proceeding; and, consequently, that as to these petitioners the order in question should be set aside because they are not and never have been common carriers and therefore are not subject to the provisions of the act or the authority of the commission.

2. That if the amendment applies literally to all persons and corporations using pipe lines for the interstate transportation of oil, and Congress has thereby undertaken to bring within the scope of the act persons and corporations owning private pipe lines used solely for transporting their own oil in the conduct of their private business, the amendment is unconstitutional because it deprives such
110 persons and corporations of their property without due process of law and takes their property for public use without just compensation, and the order should be set aside for that reason.

We shall not attempt to review at length the argument by which the first proposition is supported, but merely outline the reasons advanced for giving to the amendment a restricted application. Among other things it is said that the entire scope and aim of the act is the regulation of the charges and practices of common carriers; that its provisions are designed and adapted to that purpose and are not suited to a different purpose; that the intention to bring within such a law persons and corporations carrying on a private business should not be imputed to Congress if the amendment is reasonably susceptible of a construction in harmony with the other provisions of the regulating statute; and that the language of the amendment justifies such a construction.

In this connection it is argued that the words "engaged in transportation" are equivalent to and mean "engaged in the business of transportation"; that this indicates a calling or occupation which is followed for hire, implying transactions and relations between two or more persons, and does not embrace that which one does for himself and by himself alone. It would seem to follow from this interpretation, and the petitioners so contend, that the concluding phrase of the amendment, "who shall be considered and held to be common carriers within the meaning and purpose of this act," limits
111 the preceding declaration respecting the users of pipe lines, and operates to confine the amendment to such persons and corporations as are in fact common carriers or may be adjudged to be such by a court of competent jurisdiction. Stress is also laid upon the word "transportation," which later in the first section is given a broad definition, including "all instrumentalities and facilities of shipment or carriage, * * * and all services in connection with the receipt, delivery, * * * storage, and handling of property transported," terms which are claimed to relate exclusively to the functions of common carriers and to have no application to those who transport only their own property in the conduct of their private business.

These considerations, are sought to be fortified by invoking the familiar principle that where a statute permits of two constructions, one of which involves serious questions of constitutional power and right, while the other would be free from constitutional objection, the latter should be adopted. Numerous cases illustrating and enforcing this principle are brought to our attention, of which one of the latest is the well known "Commodities case," United States

v. Delaware & Hudson Company (213 U. S., 366). Upon these authorities the contention is earnestly pressed that the amendment should be held to apply to only such pipe-line companies as are or may be adjudged to be common carriers, because the broader construction upon which the Government insists and which would in effect extend the amendment without limitation or qualification to all persons and corporations engaged in the interstate transportation of oil by means of pipe lines, including those who use this means solely for transporting their own oil over their privately acquired rights of way, necessarily gives rise to "grave and doubtful constitutional questions" (213 U. S., supra) and perhaps to "a succession of constituional doubts," as was suggested in the Harriman case (211 U. S., 422).

112

That the argument thus summarized is not without force may be conceded. The objection to its acceptance does not arise from any doubt concerning the rule of interpretation invoked, for that rule is well settled, but rather from the lack of any substantial basis for its application. It is only when a statute is ambiguous or obscure or wanting in definiteness, so that its real intent and meaning are uncertain because the language permits differing interpretations, that the rule in question may be applied. If the legislation is clearly expressed and of unmistakable import, so that there is no room for reasonable doubt as to what the lawmaking body intended to accomplish, the courts are not at liberty to frustrate or modify the legislative intention, but must accept and deal with the statute in accordance with the manifest purpose which it expresses.

To our apprehension the meaning of this amendment is not open to serious question. It is a clear and comprehensive declaration, in no respect indefinite or incomplete. The concluding phrase is not a limitation or restriction, but on the contrary was plainly inserted for the purpose of fixing the legal status of the persons and corporations included in precise terms in the preceding description, to the end that they should be regarded and treated as comman carriers subject to the act by all officials who are or may be charged with the administration and enforcement of the regulating statute. In our judgment the amendment permits of no other or different construction, and we must therefore accept it as a plain and unambiguous measure, designed to effect a complete and definite purpose.

113

In support of this view we need cite only the first "Employers' Liability cases" (207 U. S., 463, 500). It seems evident to us that the statute then under consideration was not clearer or plainer than is the amendment in question, nor were its terms any more comprehensive and unqualified. To uphold the constitutionality of that enactment the Government stoutly contended that it should not be construed as applying to all the employees of any common carrier engaged in interstate commerce, although all were included in the language defining its scope, but should be held to embrace only such employees as were, or when they were, themselves engaged in inter-

state commerce; and this view is reflected in the dissenting opinion of Mr. Justice Moody. But a majority of the court, speaking through Mr. Justice (now Chief Justice) White, rejected the argument in an opinion from which the following is quoted:

"So far as the face of the statute is concerned, the argument
114 is this: That because the statute says carriers engaged in commerce between the States, etc., therefore the act should be interpreted as being exclusively applicable to the interstate commerce business and none other of such carriers, and that the words 'any employee,' as found in the statute, should be held to mean any employee when such employee is engaged only in interstate commerce; but this would require us to write into the statute words of limitation and restriction not found in it. * * * To write into the act the qualifying words, therefore, would be but adding to its provisions in order to save it in one aspect, and thereby to destroy it in another; * * *.

"The principles of construction invoked are undoubted but are inapplicable. Of course, if it can be lawfully done, our duty is to construe the statute so as to render it constitutional; but this does not imply, if the text of an act is unambiguous, that it may be rewritten to accomplish that purpose."

So far as the debates in Congress when this amendment was pending may be resorted to for any purpose, they tend strongly to confirm the conclusion above expressed. We are convinced from an examination of what was then said, particularly in the Senate, that Congress undertook and intended by this amendment to make common carriers of and to subject to the provisions of the act as such the owners of private pipe lines who were not common carriers and who used their respective pipe lines, and had always used them, solely for the transportation of their own oil, in carrying on their private business; and it is equally clear that Congress enacted the amendment with full knowledge that the question of its
115 constitutionality was involved. In short, we agree with the commission in what is said in the following excerpts from its report in the pipe-line proceeding:

"This seems to be the plain meaning of the act, that all pipe lines carrying oil from one State to another State, no matter what their previous status, should be thenceforward considered and deemed to be common carriers. And, to uphold this construction, reference may be made to the history of this provision.

* * * * * * *

"Throughout the discussion there is abundant evidence that Congress passed this act for the purpose of subjecting all interstate pipe lines carrying oil to Federal regulation, and took this action consciously, in the presence of the very constitutional question now raised as to its power."

Rejecting, therefore, the first proposition above stated, and holding that the amendment in question applies to the petitioners in these

cases, in common with other pipe-line companies of like character and business, we come to consider the second proposition. Does this amendment, construed in accordance with the Government's contention, which we uphold, exceed the constitutional power of Congress? Would its enforcement invade or take away rights secured to the petitioners by the fifth amendment?

Of the plenary power of Congress to regulate interstate commerce nothing need be said beyond giving it full and complete recognition.

That this power may be exercised to the utmost extent, and ac-
116 knowledges no limitations other than those prescribed in the Constitution itself, is established beyond question by a notable line of cases from Gibbons v. Ogden, decided in 1824, to the latest utterance of the Supreme Court upon the subject. But it is equally well established by numerous decisions that the limitations prescribed are positive and controlling. The same authority that grants the power fixes also the limits within which the exertion of that power must be confined. If, therefore, Congress passes a law which disregards those limits, as by depriving the owners of property of rights which the Constitution protects against invasion, the legislation can not be upheld, and it becomes the duty of the courts to stay its enforcement.

As was said by Mr. Justice Brewer in Monongahela Navigation Company v. United States (148 U. S., 336):

"But like the other powers granted to Congress by the Constitution, the power to regulate commerce is subject to all the limitations imposed by such instrument, and among them is that of the fifth amendment * * *. Congress has supreme control over the regulation of commerce, but if, in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this fifth amendment, and can take only on payment of just compensation."

And in Adair v. United States (208 U. S., 180) the Supreme Court, speaking by Mr. Justice Harlan, used the following language:

"We need scarcely repeat what this court has more than once said,
that the power to regulate interstate commerce, great and para-
117 amount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution. (Gibbons v. Ogden, 9 Wheat., 1, 196; Lottery Case, 188 U. S., 321, 353.)"

In attempting to apply these basic principles to the question now presented, we are led to observe at the outset the real significance of this amendment as disclosed by the intention with which it was enacted and the purpose which it seeks to accomplish. It does not undertake to regulate the business in which these private pipe-line companies are and always have been engaged. Indeed, it assumes that the legal status of such companies, under the laws of the States of their creation and tested by the nature of their activities, was that of persons pursuing a private occupation; and it attempts by a legislative declaration to make that private occupation a public

calling and to impose upon those who pursue it the duties and obligations of common carriers. Before the law was enacted their business was private; by force of the law itself that business is made public. Nothing which they were then doing is subjected to regulation, but they are in effect commanded to do something else which would be of public concern; and by simply declaring them to be common carriers they are made to devote their property to public use against their will and under the regulations prescribed by the act. Thus the owner of a private pipe line which was built upon private rights of way, and which has been used solely for the transportation
118 of his own oil, is required to open and extend its use to whomsoever may desire its enjoyment, no matter with what resulting inconvenience and injury to himself.

And this is concededly the intent and purpose of the amendment. It is not designed to regulate some public use to which private property has been voluntarily devoted, but it attempts by an act of legislation to transmute the agencies of private business into instrumentalities of public service. In aim and necessary effect it compels these private pipe-line companies to relinquish the exclusive use for which their pipe lines were provided, and in which they have always been employed, and to place them at the disposal, for a compensation which public authority would have the right to determine, of all such persons as might tender oil for transportation. When the principle involved in this amendment is apprehended, when its far-reaching scope and power are perceived, does not the reflecting mind almost instinctively reject it as unsound and unjust? Is it not at variance with any reasonable conception of the rights and immunities of private property and the conditions under which it may be taken for public use? How can the conclusion be avoided that it operates and must operate to deprive the petitioners of their property without due process of law and to take that property without just compensation?

Upon principle and authority it is not to be doubted, and counsel for the Government do not contend otherwise, that to effect an invasion of the rights protected by the fifth amendment it is not
119 necessary that the actual physical possession of property should be taken. It is sufficient if the owner be deprived of its exclusive use and enjoyment. This proposition is broadly stated by the Court of Appeals of New York in Forster v. Scott (136 N. Y., 577), in the following language:

"What the legislature can not do directly it can not do indirectly, as the Constitution guards as effectually against insidious approaches as an open and direct attack. Whenever a law deprives the owner of the beneficial use and free enjoyment of his property, or imposes restraints upon such use and enjoyment that materially affect its value without legal process or compensation, it deprives him of his property within the meaning of the Constitution. All that is beneficial in property arises from its use and the fruits of that use, and whatever deprives a person of them deprives him of all that is

desirable or valuable in the title and possession. It is not necessary, in order to render a statute obnoxious to the restraints of the Constitution, that it must in terms or in effect authorize an actual physical taking of the property or the thing itself, so long as it affects its free use and enjoyment, or the power of disposition at the will of the owner."

And in Weems Steamboat Co. v. People's Co. (214 U. S., 345, 355) the Supreme Court gives the principle concrete application, as follows:

"A private wharf on a navigable stream is thus held to be property which can not be destroyed or its value impaired, and it is property the exclusive use of which the owner can only be deprived in accordance with established law, and if necessary that it or any part
120 of it be taken for the public use due compensation must be made. The owner of a private wharf on a navigable stream does not, on that account only, hold it by a different title from the owner of any other property which he may use himself or permit others whom he may select to use, while at the same time denying its use by anyone else."

And this suggests the clear distinction between the question here presented and the questions decided in a number of well-known cases, all of kindred character, such as Munn v. Illinois (94 U. S., 113), Budd v. New York (143 U. S., 517), Brass v. North Dakota (153 U. S., 391), and Cotting v. Kansas City Stock Yards (183 U. S., 79). Nor did the earliest of these, Munn v. Illinois, establish any new principle of law but only gave effect to an old one, as the Supreme Court said in Dow v. Biedelman (125 U. S., 680). Indeed, it had long been held by the courts of England as well as the United States that when one devotes his property to a use in which the public has an interest he in effect grants to the public an interest in that use and must submit to be controlled by the public for the common good to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but as long as he maintains the use he must submit to the control.

But this legislation is not of that character. None of these petitioners has at any time transported oil for others or used its pipe lines for any other purpose than the transportation of its own oil which it had produced or purchased prior to the transporta-
121 tion. Nor has anything been done by them which can be claimed to effect a devotion of their property to a public use or to give the public an interest in its use, since they have always refused to carry oil for the public or to permit the use of their lines except for the transportation of their own property. The effect of the amendment is to change the nature and quality of their business from private to public, by requiring them to share with others the facilities which they have provided for themselves alone and to employ those facilities in the service of the public. In our judgment, this is something essentially different from and quite beyond the power delegated to Congress to regulate commerce among the States;

and we are persuaded that a law which in intention and result deprives the owners of private property of its exclusive enjoyment and compels the devotion of that property to public use, in the manner attempted by this amendment, involves an exercise of legislative power in plain contravention of the fifth amendment. No Federal statute of like aim and import has been brought to our attention, and no authority has been cited which sustains the validity of such legislation.

Among the cases referred to in argument, aside from those before mentioned, is Cargill v. Minnesota (180 U. S., 452), which is of the same class as Brass v. North Dakota, supra, and others involving various aspects of the same general question. Without reciting the facts of that case or quoting at length from the opinion, it is
122 sufficient to say that the Supreme Court upheld a Minnesota statute which in effect required the Cargill Company to take out a license for carrying on the business in which it had voluntarily engaged. It is true this company had never received into its warehouse any grain except its own, but the State court held that the warehouse in question could be fairly regarded as "a sort of public market place, where the farmers come with their grain for the purpose of selling the same and where the purchaser, a party in interest, acts as market master, weighmaster, inspector, and grader of the grain," and this was deemed to be of sufficient public concern to justify the State in supervising the business actually conducted. The Minnesota law made no attempt to change the character of that business, nor did it seek to compel such concerns as the Cargill Company to store or handle grain for the public or to otherwise act in the capacity of public warehousemen. Had such a requirement been imposed a very different question would have been presented. This is indicated in Brass v. North Dakota, supra, where the Supreme Court said respecting a law of that State which declared certain classes of buildings in which a warehouse business was conducted to be public warehouses:

"We do not understand this law to require the owner of the warehouse, built and used by him only to store his own grain, to receive and store the grain of others. Such a duty only arises when he chooses to enter upon the business of elevating and storing the grain of other persons for profit."

123 It is not necessary in these cases to consider the circumstances under which or the extent to which business activities, whether public or private, may be regulated by public authority. That is not the point in dispute. That the business of these petitioners, as it is and has been carried on, may be subjected to regulation need not be in any wise questioned. But it is one thing to exercise public control of a private business which as such should be placed under public supervision; it is quite another thing to require that business to be changed from private to public and compel those who are engaged in it to assume the responsibilities of a public calling.

The distinction we are here pointing out, and which seems to us controlling, is indicated in Weems Steamboat Co. v. People's Co., supra. For that reason, and because of its general bearing upon the controversy in these cases, we quote from the opinion at some length as follows:

"The case of Munn v. Illinois (94 U. S., 113, 127) has, in our judgment, no bearing upon the question before us. In that case and in those cited therein the discussion was in regard to the right of owners of property of the nature described to charge what they pleased for the doing of the business in which they were engaged. Their property was being used with their consent by and its use devoted to the public to any extent desired, and the only question was in regard to the compensation which they were entitled to ask for the business thus done. The complaint was that the charges were too great and were a violation of a law of the State and were
124 not reasonable, and the answer made by the owners of the property was that it was their private property, and they had the right to charge what they pleased. The court said, as you have devoted your property to a use in which the public has an interest, you have granted to the public an interest in that use and the right, on the part of the State, to regulate charges which you shall make to the end that they shall be just and reasonable. If the owner of one of these wharves had devoted it to the public use and permitted the public to use it as it desired and demanded compensation for such use, the question as to the amount of such compensation might be raised as in the Munn class of cases, to be determined with reference to the reasonableness of the charge. But this is no such case. The legislature has passed no law regarding rates, if that were material, and the reasonableness of the charge is not under consideration. The right to use the property has been withdrawn by the owner as to the public in general, including defendant. The only question is whether a third person has the right to use a private wharf on tendering reasonable compensation therefor, because there is no other wharf at the place, or because it would be more convenient to such third person to so use it or because the former owner of the wharf had permitted the public to use it, although the present owner refused to consent to such use. There is no more reason why such property should be held subject to the right of others to use it against the will of its owner than there is for any other kind of property to be so held."

Without referring to other authorities in this connection, we proceed to examine the particular grounds upon which the Government relies to sustain the validity of this legislation.

125 It is argued, in the first place, that the amendment should be construed as in effect prohibiting these petitioners and other private pipe-line owners from transporting their own oil from one State to another by means of pipe lines except upon condition that they transport oil for the public and become common carriers

of that commodity. This appears to have been the view of the Commission, as disclosed by the following paragraph in its report:

"So far as we are informed, the Supreme Court of the United States has never been called upon to pass upon a question of this character, and while it may be conceded that Congress could not impose upon a private pipe line the duties and responsibilities of a common carrier, it is not clear but that the provisions of this act could be upheld upon the ground that Congress was establishing a condition to which any pipe-line company must conform which transported oil across a State border."

Putting aside the suggestion that neither the form nor apparent intent of the amendment supports such a construction, since in terms it prohibits nothing and does not purport to establish a condition, and granting for argument's sake that it may and should receive the interpretation here claimed for it, we are led to reject the contention because it involves an erroneous assumption. It assumes that one who engages in the dealings or activities which constitute interstate commerce is not exercising an inherent right that springs from the nature and necessities of social order, but is merely enjoy-
126 ing a privilege which Congress can take away if it chooses or permit on such conditions as it sees fit to prescribe. But this view, so far as we are aware, has never received judicial sanction. The contrary was held in the first case involving the meaning and scope of the commerce clause which reached the Supreme Court, Gibbons v. Ogden, supra, when Chief Justice Marshall included the following in his oft-quoted opinion, page 211:

"In pursuing this inquiry at the bar it has been said that the Constitution does not confer the right of intercourse between State and State. That right derives its source from those laws whose authority is acknowledged by civilized man throughout the world. This is true. The Constitution found it an existing right, and gave to Congress the power to regulate it."

Without citing other authorities it is sufficient to quote the forcible statement of the principle by Chief Justice White, at page 502, in the Employers' Liability cases, supra (207 U. S., 463):

"It remains only to consider the contention which we have previously quoted, that the act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating power of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution; in other words, with the right to legislate concerning matters of purely State concern. It rests upon the conception that the Constitution destroyed the free-
127 dom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which can not be availed of except upon such conditions as Congress may prescribe, even although the conditions would

be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local; would obliterate all the limitations of power imposed by the Constitution, and would destroy the authority of the States as to all conceivable matters which from the beginning have been, and must continue to be, under their control so long as the Constitution endures."

In the light of these decisions nothing further need be said in this connection in answer to the argument here considered.

In the second place it is urged, and this appears to be the ground upon which the Government chiefly relies, that the amendment should be upheld as a valid regulation of interstate commerce to prevent monopoly, or, as it is said, to prevent a tendency to monopolize, and therefore any incidental injury which results must be regarded as immaterial. This position is indicated by the following paragraph in the reply brief of the learned Assistant Attorney General:

"The argument that these pipe lines are not themselves monopolies within the meaning of the Sherman Act is wholly irrelevant. That act applies only to concerns that are already monopolies, or are attempting (intentionally) to monopolize. The present act is designed to go beyond the Sherman Act. The Sherman Act cuts down the full-grown plant. The pipe-line amendment pulls
128 up the roots from which it grew. It does not prohibit the private operation of these pipe lines because they are monopolies, but because such private ownership has proved itself to be the source of monopolies, because it contains an inevitable tendency toward monopoly."

This contention also appears to involve the assumption that the amendment prohibits these petitioners, and other companies of like character, from transporting their own oil by means of pipe lines, unless they also transport for others and become common carriers of that article. We have already endeavored to show that the legislation can not be sustained even if this construction be accepted; but since such a construction seems to be suggested in support of the monopoly argument now considered, it may be suitable to add some observations to what has already been said. As heretofore stated, the amendment in terms applies to all persons and corporations engaged in the interstate transportation of oil by means of pipe lines, whether their business be extensive or insignificant, "who shall be considered and held to be common carriers within the meaning and purpose of this act." When this amendment was adopted in 1906 there were quite a large number of persons and corporations owning private pipe lines which they used in carrying on the business in which they were severally engaged, and the amendment operated upon all of them when it went into effect. They were thereby subjected to all the applicable provisions of the act and declared to be common carriers within its meaning and purpose. The

129 exclusive use of their pipe-line properties, which they had theretofore enjoyed, was brought to an end and those properties in effect appropriated for the use and benefit of others and required to be thereafter operated as public facilities in accordance with the provisions of the regulating statute. The properties whose status was thus attempted to be changed had been acquired by the respective companies under the laws of the States of their creation and without violation or evasion of any Federal enactment. Each of these concerns was carrying on a legitimate business, whether producing oil in the crude state of a natural deposit, buying and selling it in that condition, or manufacturing an article better adapted to the needs of consumers by the process of refining; and the transfer of the crude oil by pipes from wells to tanks, from tanks to points where delivery was made to customers, or by refiners from points of production or purchase to their refineries, were in every sense legitimate business operations. Equipped with these valuable aids to their private pursuits, the pipe-line owners all at once find themselves subject to a law which obliges them to become common carriers of oil under stringent regulations. It is idle to say that they can avoid the obligations which this amendment imposes by going out of the pipe-line business. Practically speaking, they have no such election, because the discontinuance of pipe-line transportation involves the virtual destruction and loss of their pipe-line properties. Nor is this alternative contemplated by the

130 enactment. On the contrary, the only rational view of its intent and purpose assumes that these pipe lines would be kept in operation under the law which devoted them to public use. It is the "necessary or natural" effect of a statute which must be taken into account, as the Supreme Court said in Minnesota v. Barber (136 U. S., 320); and it is beyond question that the persons and corporations brought within the reach of this amendment were not expected to abandon the pipe lines which they had constructed, but rather and beyond doubt to continue their use as public facilities under public regulation. The amendment was plainly designed to subject to public use these private pipe lines as they were then in operation and because in the nature of the case they must continue to be operated. The alternative of abandonment was not in contemplation, and there is no basis for the assumption here considered.

Can the amendment be sustained as a valid regulation to prevent monopoly or a tendency to monopoly? It is not open to doubt that Congress has power to legislate, within constitutional limits, for the prevention or suppression of monopoly; and the exercise of that power is manifested in the enactment of the potent and far-reaching antitrust law of 1890. It is quite evident, however, and the Government makes no claim to the contrary, that nothing which these petitioners are doing or have done amounts to a violation of the antitrust law, for here there is no combination, no absorption or control of one by another, no concerted action of any sort, not even a

131 common understanding. This being so, it must result that the

amendment in question, upon the theory now considered, is of broader scope and much more drastic character than the enactment of 1890, and that, as above stated, is the Government's contention.

It will be observed that the amendment makes no mention of monopoly and therefore does not purport on its face to be a measure for breaking up an alleged monopoly and preventing its continuance. But disregarding the absence of any declared purpose, and taking into account the circumstances under which the amendment was adopted, we may properly consider its validity upon the assumption that the real though undisclosed purpose was to destroy that degree of control of the oil business which is claimed to result from the private ownership of pipe lines and which is asserted to be monopolistic. The province of the courts in such an inquiry is defined in Minnesota v. Barber, supra (136 U. S., 320), as follows:

"Upon the authority of those cases and others that could be cited it is our duty to inquire, in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether by its necessary or natural operation it impairs or destroys rights secured by the Constitution of the United States."

And in C., B. & Q. Ry. v. Drainage Commrs. (200 U. S., 593) it was said:

"If the means employed have no real, substantial relation to
132 public objects which government may legally accomplish, if they are arbitrary and unreasonable beyond the necessities of the case, the judiciary will disregard mere forms and interfere for the protection of rights injuriously affected by such illegal action. The authority of the courts to interfere in such cases is beyond all doubt."

We are therefore to determine whether there is any real and substantial relation between the assumed purpose of the amendment, which is the prevention of monopoly, and the means adopted to accomplish that result, namely, depriving petitioners of the exclusive use of their private pipe lines and requiring such lines to be operated for the benefit of the public, and whether the means so employed are arbitrary, unreasonable, and beyond the necessities of the case.

It is quite impossible for us to perceive any such relation unless the operation of a private pipe line tends necessarily by its nature and the function it performs to produce a monopoly. The Government asserts that this is the case and bases its argument upon that proposition; but neither in brief nor oral argument is there any statement of the grounds or reasons upon which the assertion is predicated. Explanation is wanting of how it happens, or why it follows, or from what facts it is deduced, that the private operation of a pipe line in the private business of its owner produces, or has any tendency to produce, the conditions and results which the law denounces as a monopoly. Much is said about the debates in the Senate when the amendment was pending, and reference is made to

133 the report of the commissioner of corporations submitted shortly before, which gives a full account of the investigation that Congress had previously ordered. But we find nothing either in the debates or the report which has any appreciable bearing upon the question now considered. The discussions in the Senate and in the report of the commissioner deal with the conditions of unified ownership or control by the Standard Oil Company of a great portion of the pipe lines of the country, including the common carrier pipe lines, and the resulting advantage and power of that company, which were alleged to constitute an unlawful monopoly. But this comes quite short of disclosing how or why a private pipe line used solely in its owner's private business becomes of necessity, or can become while so employed, a facility which he may be forbidden to use, or the use of which he may be compelled to give to the public, because it is claimed to be a monopoly or to have a monopolistic tendency.

We are therefore unable to see that the Standard Oil case has any application to the present controversy. That case involved the monopolization or tendency to monopoly which was alleged to result from the combined control by the Standard Oil Company of New Jersey, through its dominant ownership of the stocks of numerous companies, of the greater part of all the pipe lines of importance throughout the country, both public and private, together with numerous refineries and facilities for marketing which were potentially competitive. (Standard Oil Company v. United States,
134 221 U. S., pp. 70–77.) The Supreme Court held that this vast combination and the methods of dealing which its power enabled it to enforce constituted a monopoly forbidden by law. But that is far from saying that private pipe lines separately owned by dealers in oil or refiners, and used by them in the private business in which each is separately engaged, are or can be a monopolistic possession. In short, there is no process of reasoning which sustains the contention that the ownership and operation of private pipe lines, such as are here involved, tends in the nature of things to or results in monopoly.

We have searched the decisions in vain for any definition of monopoly, any statement of its elements or description of its characteristics, which would include or apply to the activities of these petitioners and similar pipe-line owners. In the absence of some contract or combination between competitors, some mutual agreement or understanding which has in view or actually results in restricting competitive freedom, all of which are here wanting, it would seem that monopoly by a single individual must consist of or be effected by some acts or series of acts or continued course of dealing which operates to deprive others of privileges or opportunities which rightfully belong to them and which they would otherwise enjoy. But how does the possession of a private pipe line by one of many oil producers or dealers take from the others any privilege or opportunity which is rightfully theirs or which they are justly

135 entitled to share with the more fortunate owner? Of what right can they be said to be deprived, or in what respect are they subjected to any injury or disability which is illegal?

True, the possession of a pipe line enables its owner to transport his oil to the refinery or other market at very small cost compared with any other means of conveyance. The practical result may be, and in most instances doubtless would be, that other producers find it to their interest to sell the output of their wells to the owner of the pipe line, and in this sense it may be said that they are obliged to sell to him. Granted that his pipe line gives him such command that he is able to control or even fix the selling price of the crude article in that particular field or territory, upon what sustainable theory can it be claimed that other producers are deprived of anything which rightfully belongs to them because they do not or can not provide themselves with the same means of reaching the market? And upon what conception of constitutional rights can it be contended that Congress has the power to transform this private pipe line into a public facility and require its owner to become a common carrier? If this can be done, if a mere act of legislation can change the legal status of his property from private to public and compel him against his will to devote that property to public use, with all the burdens and obligations which he must thereby assume, is not the fifth amendment as to him shorn of its vitality and its protective power reduced to a shadow?

136 In the nature of things one who owns private property of substantial value has an advantage over those not fortunate enough to have similar possessions, and this advantage ranges through all degrees. It frequently results in commercial dominance of precisely the same sort and quite as complete as the alleged monopoly here considered. But the advantage so acquired, whatever its degree, is not monopolistic, nor are we able to see that it has any tendency, much less an inevitable tendency, to bring about the conditions which constitute an unlawful monopoly, except upon the socialistic theory that all private ownership is indefensible and that everything should be held in common. The simplest conception of private property implies possession which is exclusive and enjoyment from which others may be debarred; it can not otherwise be private. The advantage which comes from its legitimate use is a necessary incident of private ownership, and it is a misuse of terms to say that this advantage tends to monopoly. Although the private use of private property excludes others from the benefits and opportunities which the owner enjoys, and which might accrue to others if they shared in that use, yet this is not monopolization, whatever its indirect consequences, because those who are excluded have no rightful claim to that which belongs to the owner himself. It is only repeating to say that the private use by petitioners of the pipe lines in question has no relation to monopoly, and in no correct sense of the word tends to monopoly, since such use does not exclude others from any

137 privilege which is rightfully theirs and involves only that

exclusion which is inseparable from the possession and enjoyment of private property. It may be that the greater number of oil producers are virtually compelled to sell their output to the owners of private pipe lines, because they are unable or unwilling to build pipe lines of their own, or because there are no common carrier pipe lines to which they have access, but we are quite unable to see how the situation in which such producers are placed gives them the right, or what constitutional power Congress can exert to endow them with the right, to use the private lines of petitioners and other private companies, or how the denial of such use is a monopolistic exclusion or indicates a tendency to monopoly which deprives these private owners of the protection guaranteed by the fifth amendment. In our judgment there is no basis for the contention that the pipe-line amendment has any real or substantial relation to the monopoly alleged to result from the nature and methods of pipe-line transportation.

This conclusion in effect disposes of the kindred contention that any injury to private pipe-line owners resulting from the amendment is not a taking of their property but is merely incidental to the legitimate exertion of governmental power. The paragraph already quoted from Minnesota v. Barber (136 U. S., 320) declares it to be the duty of the court, in considering legislation of this character, to inquire "whether by its necessary or natural operation
138 it impairs or destroys rights secured by the Constitution of the United States."

Keeping in mind the unmistakable intent and meaning of this amendment, it seems to us quite obvious that its "necessary or natural operation" must impair and measurably destroy rights of ownership and use which the Constitution protects from invasion, and accomplish inevitably a taking of property within the meaning and intent of the fifth amendment. As already pointed out, the amendment does not in terms or contemplation prohibit the continued use of these private pipe lines by their respective owners, nor does it attempt to regulate in any way their use and operation as private lines. It does neither of these things. It goes much further and aims at something essentially different, since it undertakes to deprive the owners of private pipe lines of the exclusive use of their property, devotes that property to the service of the public, and compels them to become common carriers against their will. Does not this of necessity amount to a taking of private property for public use, and how can it be reasonably claimed that the resulting injury is only incidental? We have examined all the cases cited by counsel and many others which deal with the police powers of the States and the exercise of analogous powers by Congress, but none of them reaches the question here presented or gives support to the Government's contention. It seems to us too plain for argument that these private pipe lines can not be legislated into public facilities,
139 and that the amendment necessarily deprives the owners of such lines of their property rights without just compensation.

"The constitutional requirement of due process of law, which embraces compensation for private property taken for public use, applies in every case of the exertion of governmental power. If in the execution of any power, no matter what it is, the Government, Federal or State, finds it necessary to take private property for public use, it must obey the constitutional injunction to make or secure just compensation to the owner." (C., B. & Q. Ry. v. Drainage Commissioners, supra, 200 U. S., 593.)

So much was said in argument about the Commodities case that we refer to it briefly for the purpose of pointing out the fundamental difference, as we conceive, between the question there decided and the question involved in the cases at bar. In that case the Supreme Court was dealing with a law prohibiting railroad companies, which are common carriers in a complete and peculiar sense, from transporting their own property, with certain exceptions. It is unquestionably a valid regulation of interstate commerce to require the public carriers of that commerce to charge like rates for like service and to make no unjust discrimination between persons or places. To give full effect to such a fundamental principle of regulation, Congress has ample power to prevent anything which impairs its full operation. It may therefore prohibit any use of an interstate railroad which is inconsistent with or antagonistic to the equal
140 public use which such a railroad is bound to afford, or which is liable to defeat in any respect or degree the public purpose for which it is chartered. But it is an altogether different proposition to say that Congress, under the guise of regulating interstate commerce, may by a legislative decree convert these private pipe lines into public utilities and force their unwilling owners to take upon themselves the obligations of common carriers. We find nothing in the Commodities case which is at all at variance with the views herein expressed or which tends to support the validity of this amendment.

It is hardly necessary to observe that the legislation under review involves no question of public morals, or health, or safety, and therefore it seems plain that the doctrine of the Lottery case and similar decisions has no application to the present controversy.

It remains to consider briefly some minor contentions which appear to be more or less relied upon by the Government and which perhaps should not be left unnoticed. One of these contentions is based upon facts which are common to all private pipe-line companies, the others arise out of facts which are peculiar to one or more of these petitioners.

1. The pipe lines of each company are in numerous instances laid across, and sometimes along, public streets and highways, usually below the surface, under permission of the local authorities. From this circumstance or condition it is suggested that the peti-
141 tioners bring their pipe lines within the regulating power of Congress, as they might not if there were no use or occupancy

of lands dedicated to the public for highway purposes. Upon this point we concur in the opinion expressed by the commission in its report, as follows:

"* * * It appears that the usual policy of the lines is to deal with the owner of the abutting property in acquiring such highway rights upon the theory that such abutting owners own also the fee in the highway, and that the public right therein is a mere easement of passage. That this is the general rule of law there can be no doubt, and the few exceptions occur in States where the question here at issue is unlikely to arise.

"We are of the opinion that a pipe line is not impressed with the obligations of a common carrier merely because, by arrangement with the abutting owner, it uses a public highway for right-of-way purposes."

Accepting this as a correct statement of the law, it follows that Congress has no power to compel a private pipe-line owner to become a common carrier of oil merely because his pipe line crosses or is laid along public highways.

2. We also agree with the commission that the validity of this amendment is not sustained by the fact that the pipe lines of some of the petitioners, for shorter or longer distances, are laid upon the rights of way of certain interstate railroads under contract arrangements between the pipe-line owners and such railroads.

Whatever may be the right of a railway company to permit
142 such use of its property or the authority of Congress to prohibit it, we are clearly of opinion that the power to compel these petitioners to become common carriers of oil, if that power be otherwise wanting, is not brought into existence as to them by the circumstance that portions of their lines are constructed and operated on railroad rights of way. Whether or not a given pipe-line company is a common carrier depends upon the business in which it engages and for which its pipe lines were provided, and not upon the character of the route upon which those lines are located.

3. As above stated, the Prairie Oil and Gas Company was organized in 1900 under the laws of the State of Kansas. Subsequently, in 1905, the legislature of that State passed a law containing this provision:

"All pipe lines laid, built, or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this act provided."

We are of the opinion, without reviewing the argument, that this law was passed in disregard of the constitution of the State of Kansas and is therefore invalid; and it appears not to have been enforced in that State. Moreover, it seems sufficient to say, as the commission in substance says, that Federal power in such a case is not derived from a State enactment, and that if Congress is without

power to compel private pipe-line companies to become com-
143 mon carriers of oil in interstate commerce, a State statute is

not less ineffectual. In this connection it is rather interesting to observe that the Uncle Sam Oil Company claims to be prohibited by the laws of the State of its creation from engaging in the business or acting in the capacity of a common carrier.

4. It appears that portions of the lines of the Prairie Oil and Gas Company and of the Uncle Sam Oil Company were laid through Indian lands under a permit granted by the Secretary of the Interior. Among the rules and regulations for granting rights of way to pipe-line companies prescribed by the Secretary of the Interior on December 2, 1905, was the following:

"And no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a common carrier and agrees to all the provisions hereof."

We are satisfied from the record that the permit to the Prairie Oil and Gas Company was granted prior to the date mentioned and under regulations which did not contain the quoted condition. This being so, there is no basis for contending that this company assumed any public obligation by reason of the fact that it was permitted to lay its lines across the lands in question. Moreover, we indulge to the opinion, from examination of the law under which the Secretary acted, that he had no authority to impose such a condition (United States v. McMurray, 181 Fed., 723); and this perhaps accounts for the circumstance that the condition was eliminated in 1909, as we understand the matter, and has not since been
144 required. It is also to be noted with reference to this contention that no part of the lines of these companies, including those laid across Indian lands, has ever been used as a common-carrier line or for any other purpose than to transport the property of its owner.

5. The remaining contention relates to the pipe lines of the Standard Oil Company of New Jersey and is based upon facts which, so far as deemed material, may be summarized as follows: The line from Unionville across the State of New Jersey to the Bayonne refinery was built upon private rights of way and put into operation in 1882 by the National Transit Company, which, under the terms of its charter, is a common carrier in the State of Pennsylvania. About May 1, 1894, this line was transferred to the New York Transit Company, which was incorporated under a law of the State of New York, by virtue of which it became a common carrier within that State. The line from Centerbridge to the Bayway and Bayonne refineries was built upon private rights of way and put into operation in 1897 by the National Transit Company. The line from Fawn Grove to the Baltimore refinery was likewise built upon private rights of way and put into operation about 1885 by the National Transit Company.

The New York Transit Company was never reincorporated in the State of New Jersey nor was the National Transit Company ever reincorporated in the State of New Jersey or the State of Maryland.

In neither of these States is there any law providing for the
145 organization of common-carrier pipe-line companies, and

neither of the corporations mentioned has ever possessed or attempted to exercise the right of eminent domain in New Jersey or Maryland. Nor has either of them, under the laws of those States or by virtue of any agreement connected with its acquisition of rights of way or otherwise, ever assumed the obligations of a common carrier or at any time acted in that capacity in the States in which the lines in question are located.

Subsequently these three lines were sold and transferred to the Standard Oil Company of New Jersey, one of the petitioners herein. The preliminary steps appear to have been taken in November, 1905, and the sale consummated by delivery of deeds of conveyance in July, 1906. Shortly afterwards the purchaser took over the entire operation of the lines, and has since used them exclusively for transporting its own oil to the refineries mentioned; and we assume for present purposes that this transfer was made in anticipation of the passage of this amendment or some similar law, and to avoid any undesired consequences which might follow from such legislation if the lines remained in the possession of their former owners.

Nevertheless we are unable to see that the facts here referred to place the owner of these particular lines on any different footing from other private pipe-line companies as respects the validity of the pipe-line amendment. The former owners were never under obligation by their charters or otherwise to perform the duties of a
146 common carrier in New Jersey or Maryland; they never had held themselves out as common carriers in those States; nor had either of them in fact carried oil therein except for a single customer. The fact that the transit companies were organized as common carriers in New York and Pennsylvania did not make them common carriers in New Jersey or Maryland, nor, in our opinion, would it prevent them, even if they had been carrying for the public, from discontinuing such service in the latter States and becoming therein purely private pipe-line companies. (Weems Steamboat Co. v. People's Co., supra.) We think it also clear that they had the right to sell these New Jersey and Maryland lines to the Standard Oil Company, that the purchaser had a right to acquire and use them exclusively in its private business, and that no public obligation was thereby assumed or public duty imposed (Oman v. Bedford-Bowling Green Stone Co., 134 Fed., 64); and it is equally clear that neither the right of the transit companies to sell nor the right of petitioner to buy was affected by the assumed motive for the transaction. Without amplifying the argument we have no hesitation in holding that if the amendment in question is invalid as to the other private pipe-line companies, for the reasons above stated, it is equally invalid as to this petitioner and the particular lines here considered.

This discussion might be prolonged almost indefinitely, for the underlying question is full of suggestions, but enough has been said to indicate the general reasons upon which we base our con-
147 clusion. We are impressed with the serious and unwelcome

responsibility of invalidating in any respect an act of Congress, because it manifests an exertion of power in excess of constitutional limitations. But we can not escape the conviction that this pipe-line amendment, which we must construe according to its undoubted meaning, is an act of legislation which plainly invades the rights secured to these petitioners by the fifth amendment, and we can not, therefore, do otherwise than stay the enforcement against them of the commission's order. Without reference to other considerations which might justify preliminary injunctions in these cases, we have purposely placed our decision upon grounds which in effect determine the controversy, and we have done so to avoid occasion for protracted trials and to aid an early review by the court of last resort.

A preliminary injunction will be granted as prayed for in each of the above-entitled cases, and it is so ordered.

MACK, Judge, dissenting:

I concur with the majority of the court in their construction of the statute.

Because of the conclusions reached on the constitutional question, it is unnecessary for me to differentiate the several petitioners or to express any opinion on the so-called minor contentions.

On the fundamental question of the constitutionality of this legislation, under which, in effect, interstate transportation of oil
148 by pipe lines is prohibited unless the transporter will act as a common carrier subject to the provisions of the interstate commerce act, I am compelled to dissent.

It is conceded in the majority opinion that an act of Congress is constitutional if its object is within the realm of Federal authority and if the means employed for its accomplishment have a real and substantial relation thereto and are not arbitrary, unreasonable, and beyond the necessities of the case.

A doubt, however, is not to be resolved against but in favor of the validity of legislation; courts should not declare a statute unconstitutional until they are satisfied thereof beyond a reasonable doubt. Whether consistently carried out in practice or not, this has ever been a fundamental rule in our jurisprudence. (Ogden v. Saunders, 12 Wheat., 213.) While its application alone would compel me to dissent in this case, I do not rest my conclusions upon the existence of a reasonable doubt. In my judgment, the act is within the power of Congress to regulate interstate commerce.

This power may be exerted for many purposes: Directly, to remove restraints thereon or obstructions thereto; indirectly, to conserve the public health or morals or to promote the general welfare. The means to be adopted for the accomplishment of a legitimate purpose rest in the sound discretion of Congress, subject only to the limitation hereinbefore stated.

As the Supreme Court in its most recent decision bearing on
149 this question says (Hoke v. U. S., Feb. 24, 1913): "Congress

...LOSE IN CENTER

may adopt not only means necessary but convenient to its exercise and the means may have the quality of police regulations."

What, then, is the object of this act? Its aim is neither completely to take from the owner or absolutely to prohibit his use of pipe lines theretofore within his exclusive control; it does, however, condition that use in interstate commerce upon his permitting a like use by the general public on payment of reasonable compensation therefor; the alternative is to cease to operate them or to dispose of them.

Clearly, therefore, the general purpose is to regulate interstate commerce in oil; the immediate specific object is to remove a serious obstruction to the free play of competitive forces in the industry, to prevent a monopolization of a part of such commerce. It is immaterial that this purpose is not proclaimed in the act itself; the history of the legislation and the debates, particularly in the Senate, leave no room for doubt as to the evils which Congress and the public generally believed to exist.

In 1905 the House of Representatives had directed an investigation of the oil industry by the Bureau of Corporations. In 1906 a first report (59th Congr., 1st sess., H. R. Doc. 812) was made, primarily on the operations of the Standard Oil Company. (This was followed in 1907 by two more elaborate reports as well as by a report of the Interstate Commerce Commission, 59th Congr., 2d sess., H. R. Doc. 606.) The relation of pipe lines and pipe line transpor-
150 tation to the development of the industry was fully detailed; it was therein demonstrated not merely that the unification of many of these lines under the Standard Oil Co. was the keystone of its practical monopoly in the refined products, but also that the possession of the only pipe line in any field necessarily gave the owner thereof control in the distribution of oil there produced. He was for all practical purposes the sole available customer for the greater part of crude oil and could thus ordinarily fix the price to be paid therefor. This was due to the utter practical impossibility of competition between one dependent upon railroad transportation and one who could transport his crude product through pipe lines. The important customer of the crude-oil producer is the refiner. But as refineries are generally and more advantageously located in the great markets and near the seaports and not in the oil fields, most of the crude oil must be transported. Physically, this could be done in barrels or tank cars by railroad; economically, railroads can not compete with pipe lines, because the actual cost of railroad transportation is three or four times that of pipe line transportation.

A pipe line, however, is not a transportation facility readily available to the producer as is a horse and wagon, or to-day even an automobile, to the average farmer. In the developed stage of the oil industry it is, in its very nature, analogous to the instrumentalities used by common carriers and other public-service corporations. Ordinarily these lines are hundreds of miles in length. Like
151 railroads, there are trunk and branch lines; to construct them requires large capital; to duplicate them between an oil field

and its natural market would usually involve economic waste similar to that caused by paralleling railroad lines.

An individual or corporation controlling the pipe-line transportation in any field would thus have the same opportunity of monopolizing the distribution of the crude oil from that field, as the owner of the only railroad in any section would have to monopolize the distribution of most articles produced or manufactured along the line. His ownership gives him the practical power of monopolizing the purchase of the goods and of fixing the price thereof and thereby of monopolizing interstate commerce therein, at least in certain territories. In the one case, as in the other, governmental regulation is essential to check this evil.

The actual situation in 1906 as reported to Congress was that most pipe lines, both common carrier and private, were under the domination of the Standard Oil Co. The Commissioner of Corporations had said that it had "all but a monopoly of the pipe lines in the U. S." and that "its control of them was one of the chief sources of its power." (59th Congr., 1st sess., H. R. Doc. 812, pp. 36 and 37.)

In Purity Extract & Tonic Co. v. Lynch, 226 U. S., 192, the Supreme Court says: "The existence of power is not to be denied simply because some innocent articles or transactions may be found within the proscribed class. The inquiry must be whether, 152 considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat." And so it may well be that even if the primary purpose of the act were to prevent the use of the pipe lines as an essential element in and for the purpose of building up the Standard Oil Co.'s monopoly in the refined products, the power of Congress is not to be denied merely because some other lines are brought within the terms of the act.

To determine then whether the means adopted to secure these legitimate ends are reasonable or not, we must consider what remedies were available by which the channels and instrumentalities of interstate commerce could be kept open so that all producers on payment of a reasonable compensation might be enabled to compete freely in their natural markets.

Government ownership either through condemnation by eminent domain or through the construction of new lines would be possible, but at this time and until every other available measure of relief shall have proved ineffective, such a radical departure from the previous policy of regulation entailing, in the judgment of many, evils far greater than those attempted to be cured can not be deemed so feasible an alternative as to necessitate its adoption.

Subjection of common-carrier pipe lines to the stricter supervision and regulation prescribed by the interstate commerce act would afford only partial relief; many, if not most, of the important lines were not operated by common carriers.

153 Disintegration of the Standard Oil Co. under the Sherman Act would probably result in freer competition, but it would

not give the necessary relief to independent producers who would still have to sell to the private pipe-line owner or stimulate effectively the construction of independent refineries which, under a régime of private pipe lines, would have difficulty in securing the crude product.

The only feasible remedy was the one adopted by Congress, to make the existing facilities available to the public generally by prohibiting their use except on this condition. That thereby the exclusiveness of private ownership was invaded does not render the act unconstitutional. The case of Weems Steamboat Co. v. Peoples Co., 214 U. S., 344, held only that at common law and without statutory grant no one could compel another to permit the use of his property for just and reasonable compensation merely because the property, a private wharf, was a desirable or even an essential facility of commerce. The court, however, expressed no opinion on the validity of legislation compelling such permission.

Congress, like the State legislatures, can authorize the actual destruction of private property if such destruction be reasonably essential to the accomplishment of a legitimate legislative purpose. (Hipolite Egg Co. v. U. S., 220 U. S., 45.)

It may and it has absolutely prohibited certain forms of interstate commerce. (Hoke et al. v. U. S., supra; The Lottery cases, 188 U. S., 321.)

154 Under the Sherman Act, disintegration of vast combinations of capital has been decreed irrespective of the depreciation therein produced in the value of property. (U. S. v. Standard Oil Co., 221 U. S., 1.)

Under the commodities clause common carriers are prohibited from transporting certain of their own property and are thus compelled to part with the ownership before transportation regardless of the loss suffered thereby. (U. S. v. D. & H. Co., 213 U. S., 366.)

By the Carmack amendment the burden of responding in damages to a shipper for losses occasioned by the acts of independent but connecting carriers is imposed upon the initial carrier "as a condition of continuing in that traffic." (A. C. L. v. Riverside Mills, 219 U. S., 186.)

And in cases not involving common carriers, prohibition acts adopted under a State power no more extensive than that granted to Congress by the commerce clause as limited by the fifth amendment, have been held constitutional despite the practical destruction thereby of most of the value of brewery and distilling plants. (Mugler v. Kansas, 123 U. S., 625.) And if a State, in the regulation of private business, such as banking, in order to promote the public welfare, may "go from regulation to prohibition except upon such conditions as it may prescribe" (Noble State Bank v. Haskell, 219 U. S., 104, see Engle v. O'Malley, 219 U. S., 128), is the Federal Government to be denied the use of like means?

155 The power to regulate can not, of course, be used either directly or by the imposition of conditions precedent to the

exercise of the right to engage in interstate commerce, as a subterfuge to extend the jurisdiction of the Federal Government to those matters over which the States have exclusive control. (Employers' Liability cases, 207 U. S., 463.) The amendment in question, however, makes no such attempt. The condition thereby imposed is not in any sense a regulation of domestic commerce; it is directly and essentially a regulation of interstate commerce alone.

The remedy prescribed by this amendment is far less drastic than that adopted to abate other restraints on interstate commerce; that it is feasible is demonstrated by the fact that many pipe lines are operated by common carriers and that in at least two States, Kansas and West Virginia, all pipe-line carriers are declared by statute to be common carriers. Therefore, in my judgment, it can not be deemed an unreasonable or arbitrary exercise of legislative power.

But if, as is contended, the act can not be sustained as a legitimate regulation of commerce, if it amounts to a taking of private property for public use, does it afford the owner the just compensation to which he is constitutionally entitled?

To deprive one of the entire or partial use of property is a taking thereof; a distinction, however, may well be made in the method of compensation dependent upon whether the owner is deprived
156 of his title, of the possession, or only of the exclusive use. Otis Co. v. Ludlow Co., 201 U. S., 140, and Clark v. Nash, 198 U. S., 361, are cases in which only the exclusiveness of the owner's use of his property was invaded; his title and possession were undisturbed. In the former, only a right of action in tort was given to the upper riparian land owner for the damages that would be caused from time to time by overflowing his land pursuant to a statutory right granted to the builder of a dam. In the latter, while payment for the easement of bringing water through a neighbor's private irrigation ditch was required under a statute granting individual owners of arid land the right so to use the private property of others, no security was provided for the share of maintenance expense to be paid from time to time. Each of the statutes was held to be constitutional.

In the present case, just and reasonable compensation for the use to be made from time to time of these pipe lines is secured, and it may well be doubted whether any other or additional compensation can constitutionally be demanded merely because of the change in the status of the pipe-line owner to that of a common carrier and the consequent subjection of the line itself and of the owner to the regulatory supervision of the Interstate Commerce Commission.

157 In the United States Commerce Court.

October Session, 1912.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT: INTERSTATE COMMERCE COMMISSION, INTERVENER. } No. 80.

Order granting preliminary injunction. Entered March 14, 1913.

This cause came on to be heard at this session and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First, that a preliminary injunction be and the same is hereby issued, as prayed for in the petition, against the order of the Interstate Commerce Commission entered June 3rd, 1912, the effective date of the same having been extended to March 15th, 1913, notifying and requiring the petitioner to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce, a copy of which order is attached to the petition and made a part thereof; and that the said order and its force and effect be and the same is hereby suspended, restrained, and enjoined until the further order of the court.

Second, that a duly certified copy of this order be forthwith served by the marshal of this court upon the Attorney General of the United State and the chairman of the Interstate Commerce Commission.

By the court.

MARTIN A. KNAPP,
Presiding Judge.

158 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary junction on the chairman of the Interstate Commerce Commission by leaving a certified copy thereof with Alfred Holmead, assistant secretary.

March 14, 1913.

F. J. STAREK,
Marshal.

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the Attorney General, by leaving a cerfitied copy thereof with Blackburn Esterline.

March 14, 1913.

F. J. STAREK,
Marshal.

159 In the United States Commerce Court.

October Session, 1912.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE Commerce Commission, intervener. } No. 80.

Petition for appeal. Filed March 14, 1913.

The United States of America, respondent, and Interstate Commerce Commission, intervener, feeling themselves aggrieved by the interlocutory order or decree of the Commerce Court, entered March 14, 1913, granting a preliminary injunction suspending and enjoining the order of the Interstate Commerce Commission until the further order of the court, by their respective counsel, pray an appeal to the Supreme Court of the United States, in accordance with section 2 of an act entitled "An act to create a Commerce Court," etc., approved June 18, 1910.

The particulars wherein the United States and the said intervener consider said order or decree erroneous are set forth in the assignment or errors on file, to which reference is made.

And the United States and the said intervener further pray that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

J. C. MCREYNOLDS,
Attorney General of the United States.

CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

160 In the United States Commerce Court.

October Session, 1912.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT, AND Interstate Commerce Commission, intervening respondent. } No. 80.

Assignment of errors. Filed March 14, 1913.

Come now the United States of America, respondent, and Interstate Commerce Commission, intervening respondent, by their re-

spective counsel, and in connection with their application for appeal file the following assignment of errors, on which they will rely upon said appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court entered March 14, 1913, in the above-entitled cause.

The Commerce Court erred:

I.

In holding and adjudging that the amendment of June 29, 1906, to the act of Congress entitled "An act to regulate commerce," etc., approved February 4, 1887, which provides that "The provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, and partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this act * * *" is unconstitutional and void, as in violation of the Fifth Amendment to the Constitution of the United States.

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II.

In construing the said amendment of June 29, 1906, relating to pipe lines as a declaration by Congress that all private pipe-line companies doing business in interstate commerce shall become and be common carriers subject to the act to regulate commerce, and in not construing the said amendment as a declaration by Congress that the transportation of crude oil in interstate commerce by means of pipe lines should thereafter be carried on only by common carriers subject to the act to regulate commerce.

III.

In holding and adjudging that the receiving and storing stations and the market places established by petitioner in the fields of production of crude oil, and the inspecting, grading, measuring, purchasing, and receiving of oil thereat by petitioner, did not constitute such public receiving and storing stations, public markets for the purchase and sale of crude oil, and a part of the transportation thereof in interstate commerce subject to regulation by Congress.

IV.

In holding and adjudging that the construction and operation of pipe lines upon and over the public streets and highways, and upon and over the rights of way of common carriers, by railroad subject to the act to regulate commerce and transporting interstate traffic through said pipe lines did not subject the pipe-line companies to the regulating power of Congress.

V.

In not holding and adjudging that the ownership and operation of pipe lines by the petitioner, and the manner and form in which the same are used in the purchase, transportation in interstate
162 commerce and sale of crude oil constitute monopoly and monopolistic tendencies, and that Congress has the power to destroy monopoly and to prevent monopolistic tendencies by declaring that the interstate transportation of crude oil shall be carried on by common carriers subject to the act to regulate commerce.

VI.

In holding and adjudging that the ownership and operation of the pipe lines in question in the manner and form in which the same are used do not tend, in the nature of things, to or result in monopoly or monopolistic tendencies, even though the business methods of the petitioner were adopted and its pipe lines were acquired and operated for the purpose of monopolizing crude oil and controlling the output and price thereof, and obstructing the free flow and movement of crude oil in the channels of interstate commerce.

VII.

In not holding and adjudging that the petitioner acquired its pipe lines and adopted its manner of doing business for the purpose of obstructing the free flow and movement of crude oil in the channels of interstate commerce, and of thwarting and evading regulation under the act to regulate commerce, while at the same time carrying on the business of a common carrier of crude oil by means of pipe lines and controlling the output, purchase, sale, and transportation thereof in interstate commerce.

VIII.

In holding and adjudging that the pipe line of the petitioner from Ida to Baton Rouge is in and of itself a pipe-line system; and in not holding and adjudging that the same is not a pipe-line system in and of itself but is a mere section or end of a pipe line held by the petitioner as a device and subterfuge for the purpose of thwarting and evading the act to regulate commerce and regulation thereunder, and for the purpose of obstructing the free flow and move-
163 ment of crude oil in the channels of interstate commerce.

IX.

In granting the motion for a preliminary injunction and in suspending and restraining the order of the Interstate Commerce Commission entered June 3, 1912, referred to in the petition, and in not denying the said motion.

Wherefore the United States and the said Interstate Commerce Commission pray that the said interlocutory order or decree of the Commerce Court, entered March 14, 1913, be reversed, annulled, and set aside, and that the petition be dismissed, and for such other and further order as may be appropriate.

J. C. McREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

164 In the United States Commerce Court.

October Session, 1912.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; AND
Interstate Commerce Commission, intervener. } No. 80.

Order allowing appeal. Entered March 14, 1913.

In the above-entitled cause, The United States of America and Interstate Commerce Commission, having made and filed their petition praying an appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court, entered March 14, 1913, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided—

It is ordered and decreed that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the 13th day of April, A. D. 1913; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

165 United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; Interstate Commerce Commission, intervener. } No. 80.

UNITED STATES OF AMERICA, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to

164, inclusive) to be a true and complete transcript of the proceedings had and papers filed in the above-entitled cause as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 15th day of March, A. D. 1913.

[SEAL.] G. F. SNYDER, *Clerk*.

166 *Citation on appeal.*

UNITED STATES OF AMERICA, SS:

To Standard Oil Company of Louisiana, a corporation:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America and Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the interlocutory order or decree rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this fourteenth day of March, in the year of our Lord nineteen hundred and thirteen.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a true copy of the within citation is hereby admitted this 17th day of March, A. D. 1913.

[SEAL.] CHESTER O. SWAIN,
Solicitors for Appellee,
The Standard Oil Company of Louisiana, a corporation.

Copy received March 17th, 1913.

FRANK L. CRAWFORD.

Copy received March 18th, 1913.

JOHN G. MILBURN, Jr.

167 (Indorsed:) File No. 23589. Supreme Court U. S. October Term, 1912. Term No., 1014. The United States et al., appellants, vs. Standard Oil Company of Louisiana. Citation and proof of service of same. Filed March 21, 1913.

168 In the Supreme Court of the United States.

October Term, 1913.

THE UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
STANDARD OIL COMPANY OF LOUISIANA, APPELLEE. } No. 1014.

Stipulation.

It is hereby stipulated and agreed, by and between the parties, by their respective solicitors, that the following documents contained in the record need not be printed, viz:

Opinion of the Commerce Court, announced and filed March 11, 1913;

Report of the Interstate Commerce Commission in the proceeding entitled "In the Matter of Pipe Lines, No. 4199";

and that upon the hearing the court and the counsel may refer to and use the printed copies of the said documents and each of them, which have been filed by the appellants in United States of America et al. v. The Ohio Oil Company, No. 1012, to all intents and purposes as though printed in the record herein.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
WM. G. MILBURN,
CHESTER O. SWAIN,
Solicitor for Standard Oil Company of Louisiana, Appellee.

169 (Indorsed:) File No. 23589. Supreme Court, U. S. October Term, 1912. Term No. 1014. The United States et al. appellants, vs. Standard Oil Company of Louisiana. Stipulation to omit part of record in printing. Filed April 16, 1913.

170 In the Supreme Court of the United States.

October Term, 1912.

UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
STANDARD OIL COMPANY OF LOUISIANA, APPELLEE. } No. 1014.

Stipulation.

It is hereby stipulated and agreed, by and between the parties, by their respective solicitors, that the attached copies of tariffs and the attached copy of the order for completion of the record may be attached to and taken and considered as a part of the record in the

Supreme Court on the hearing of the appeal in the above-entitled cause.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.
WM. G. MILLIKEN,
Counsel for Standard Oil Company of Louisiana, Appellee.

171 In the United States Commerce Court.

STANDARD OIL COMPANY OF LOUISIANA, PETITIONER,
v.
THE UNITED STATES OF AMERICA ET AL., RESPONDENTS. } No. 80.

Order for completion of the record. Entered March 29, 1913.

It appearing that copies, duly certified by the Interstate Commerce Commission, of the following tariffs of common-carrier pipe line companies, namely, (1) The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5; (2) National Transit Company Joint Tariff, I. C. C. No. 12; and (3) Memorandum of the Division of the Rates named in said I. C. C. No. 12, were offered by counsel for the United States at the hearing on the motion for preliminary injunction in the above-entitled cause and were received and considered by this court, but by oversight were not filed with the clerk.

It is ordered, this 29th day of March, 1913, that said certified copies of said tariffs be filed and made a part of the record in the above-entitled cause, nunc pro tunc, as of October 22, 1912.

MARTIN A. KNAPP,
Presiding Judge.

A true copy.
Test:
[SEAL.]
W. F. SAUNDERS,
Clerk of the United States Commerce Court.

172 INTERSTATE COMMERCE COMMISSION,
Washington.

(Filed March 29, 1913, nunc pro tunc as of October 22, 1912.)

I, John H. Marble, secretary of the Inter-state Commerce Commission, do hereby certify that the documents hereto attached, and more particularly hereinafter described, are true copies of schedules lawfully filed with the said Interstate Commerce Commission of dates specified below, to wit:

The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5, filed on May 21, 1908.

National Transit Company Joint Tariff I. C. C. No. 12, filed on September 25, 1908.

Memorandum of the Division of Rate named in said I. C. C. No. 12, filed on May 28, 1912.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 25th day of October, A. D. 1912.

[Seal of Interstate Commerce Commission.]

JOHN H. MARBLE,
Secretary of the Interstate Commerce Commission.

173 THE TEXAS COMPANY.

(Pipe line tariff.)

Received Interstate Commerce Commission. 72055. May 21, 1908. Division of Rates and Transportation.

The rates named by this tariff are for the interstate transportation of crude petroleum by The Texas Company's Oklahoma-Texas Trunk Pipe Line and are subject to the regulations made part hereof and set forth on page 2, and are expressed in cents per barrel of 42 United States gallons.

From the point in the Glenn Pool (Oklahoma), now established for reception of crude petroleum into The Texas Company's trunk line.

To any one of the Texas points named below at the rate indicated in each instance, to wit:

To West Dallas (Texas) station on said trunk line, at twenty (20) cents per barrel.

To Eleanor (Texas) Station on said trunk line, at twenty (20) cents per barrel.

To Corsicana (Texas) station on said trunk line, at twenty-five (25) cents per barrel.

To Beaumont (Texas) station on said trunk line, at thirty-five (35) cents per barrel.

To Port Arthur (Texas) station on said trunk line, at thirty-seven and one-half (37½) cents per barrel.

NOTE.—All deliveries at destination to customer's vessels, or to customer's tanks connected with The Texas Company's lines will be subject to a further charge of 2½ cents per barrel.

NOTE.—Upon demand for such appearing the company is prepared to consider proper promulgation of tariffs for intermediate points not covered by this or other tariffs in force.

"Issued under special permission of the Interstate Commerce Commission, No. 5522, of date May 18, 1908."

Issued May 19, 1908. Effective June 1, 1908.

Subject to change under terms of law.

J. S. CULLINAN,
President of The Texas Company, Houston, Texas.

174 THE TEXAS COMPANY.

(Regulations.)

The Texas Company will undertake interstate transportation of crude petroleum only by its trunk pipe line, receiving and delivering such through its own facilities, and not otherwise, subject to further provisions as follows:

1. Separate pipeage contracts for shipments, in accord with this tariff, and these regulations covering other proper details, must be executed by the parties a reasonable time before the duty of transportation arises.

2. Crude petroleum will be received subject to the right and to the consequences of mixing such with and delivering such from common stock only, the minimum gravity at time of its reception for transportation to be 30 degrees Beaumé; the usual and proper methods of measurements to apply.

3. Storage incident to and during transportation only is available and can be afforded, and the shipper must provide facilities for receiving the oil at destination.

4. The right to require prepayment or acceptable security for charges is reserved, also satisfactory assurance that the crude petroleum is free from liens and charges, and that the shipper has the right to direct its disposition.

5. No limitations are prescribed at this time as to quantities, but reasonable limits will be required by the terms of pipeage contracts, and in the event of tenders in excess of capacities, including outstanding pipeage obligations, the right to reasonably allot and apportion is reserved by The Texas Company, and tender for transportation shall not be good for quantities in excess of such as is already in, or available for immediate delivery into, The Texas Company's pipe lines at the time of such tender.

6. Patrons may use, without additional charge, the company's private telegraph lines for messages incident to the business; The Texas Company, however, not to be liable for delivery of messages away from its offices, nor for delay in transmission, nor for interruption of service.

7. All crude petroleum transported under this tariff is subject to further charges for gathering preliminary to receiving the same into the main trunk line, according to the then existing schedule of such charges, which are subject to change, and which at present are as follows:

Where the distance is 15 miles or more, 20 cents per barrel.

Where the distance is less than 15 miles but more than 10 miles, 15 cents per barrel.

Where the distance is less than 10 miles, 12½ cents per barrel.

Air-line distance to apply in accord with The Texas Company's field maps. If other delivery is desired special arrangements must

be made, covering additional charge proportionate to the service rendered, in no case to be less than 2½ cents per barrel.

8. In case of fire destroying any oil in the custody of The Texas Company's pipe-line department after oil has been received for transportation, and before the same shall have been delivered to the consignee, the shipper shall stand a loss proportionately as the amount held for such shipper bears to all the oil, including its own, in the custody of The Texas Company's pipe-line department at the time of such fire, and shall be entitled to have delivered only such proportion of such shipment as is left after deducting the proper proportion of the loss, as above; but, in such event, shall be required to pay carriage charges only on the quantity of oil delivered—statements of quantities ascertained and computed from the records in the usual manner by The Texas Company shall be accepted as prima facie correct in the adjustment of a loss under this clause.

175 JOINT TARIFF.

(Two copies to be posted at the receiving station, as required by law.)

Received, Interstate Commerce Commission. 125490. Sept. 25, 1908. Division of Rates & Transportation.

National Transit Company, in connection with South West Pennsylvania Pipe Lines F X 3 No. 1, The Eureka Pipe Line Company F X 3 No. 1, and Southern Pipe Line Company F X 3 No. 1.

The rates named in this tariff are for the transportation of crude petroleum oil by pipe lines, subject to the regulations named within—

From Nedsky, Pa. (via Morgantown, W. Va.), to Fawn Grove, Pa. Rates per bbl. of 42 gallons, 32 cts.

In addition to said rate, all oil tendered for shipment to Fawn Grove, Pa., at points in Pennsylvania other than Nedsky, Pa., will be subject to a further charge of 20 c. per barrel of 42 gallons each for gathering and transporting the same to Nedsky.

The rates named in this tariff are subject to change at any time upon the National Transit Co. giving the thirty (30) days' notice required by law.

Issued September 23d, 1908. Effective October 28th, 1908.

GEORGE CHESEBRO,
Secretary National Transit Co., New York, N. Y.

176 REGULATIONS.

This company will receive crude petroleum for interstate transportation only to established delivery stations on its own lines and lines of connecting pipe-line companies on the following conditions:

First, it will receive crude petroleum for interstate transportation when the shipper has provided the necessary facilities for receiving said petroleum as it arrives at destination.

Second, orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of petroleum shall amount in the aggregate to seventy-five thousand (75,000) barrels or more, consigned to the same point of delivery; and, subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

Third, it will forward such crude petroleum when there has been tendered to it by the shipper individually, or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than seventy-five thousand (75,000) barrels, all of which shall be consigned for delivery to the same delivery point.

Fourth, all such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in quality while in transit as may result from the mixture of said petroleum with other petroleum in the pipe lines or tanks of this or the connecting company or companies.

Fifth, crude petroleum will only be accepted for transportation when free from all liens and charges.

Sixth, this company is not engaged in the transportation of refined oil and will not therefore accept the same for transportation.

Seventh, any patron of this company wishing to send telegrams pertaining to the oil business will be allowed to do so free of charge. This does not include any delivery of telegrams at destination except at the company's office.

177 Received, Interstate Commerce Commission. 34856. May 28, 1912. Division of Tariffs.

Memorandum of the division of rate named in Joint Tariff I. C. C. No. 12, issued by the National Transit Company in connection with South West Pennsylvania Pipe Lines, The Eureka Pipe Line Company, and Southern Pipe Line Company, for the transportation of crude petroleum oil from Nedskey, Pa., to Fawn Grove, Pa., effective June 1, 1912. This memorandum is made in accordance with conference ruling No. 209.

The rate given was from Nedskey, Pa., to Fawn Grove, Pa., at 32 cents per barrel of 42 gallons. The division of this rate rests on verbal agreement and is as follows:

	Per barrel of 42 gallons.
The Eureka Pipe Line Company	3.83 ¢
South West Pennsylvania Pipe Lines	5.07
Southern Pipe Line Company	19.34
National Transit Company	3.76
Total	32.00 ¢

S. R. Ball,
Secretary National Transit Company.

Oil City, Pa., *May 27, 1912.*

178 (Indorsed:) File No. 23589. Supreme Court U. S. October term, 1912. Term No., 1014. The United States et al., appellants, vs. Standard Oil Company of Louisiana. Stipulation and addition to record. Filed April 19, 1913.

(Indorsement on cover:) File No. 23589. U. S. Commerce Court. Term No. 1014. The United States of America and Interstate Commerce Commission, appellants, vs. Standard Oil Company of Louisiana. Filed March 15th, 1913. File No. 23589.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible]. 1913

No. [illegible]. 506

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE PRAIRIE OIL & GAS COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

FILED APRIL 10, 1913.

(23628)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 1053.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS,

vs.

THE PRAIRIE OIL & GAS COMPANY.

APPEAL FROM THE UNITED STATES COMMERCE COURT.

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In the United States Commerce Court.

THE PRAIRIE OIL & GAS COMPANY, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT;
Interstate Commerce Commission, intervener.
No. 75.

UNITED STATES OF AMERICA, *ss:*

Be it remembered that in the United States Commerce Court, in the city of Washington, District of Columbia, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Petition for injunction. Filed July 13, 1912.

1 In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
versus
THE UNITED STATES OF AMERICA, RESPONDENT.
No. 75.

Petition for injunction, as amended under authority of order entered October 31, 1912.

TO THE JUDGES OF THE UNITED STATES COMMERCE COURT:

The Prairie Oil and Gas Company, a corporation duly organized and existing under the laws of the State of Kansas, as petitioners herein against The United States of America, does now complain and aver:

I. That The Prairie Oil and Gas Company is now, and at all times hereinafter mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of Kansas, with authority as such to explore for, mine, produce, purchase, store, sell, and transport petroleum oil, and to explore for, mine, produce, purchase, sell, and transport natural gas. It is now and for more than ten years last past has been engaged in such business, under authority as aforesaid, and has accumulated in stock a supply of crude petroleum amounting to more than 40,000,000 barrels; and acquired about 1,833 producing oil wells, having an aggregate production of approximately 11,557 barrels per day. It is under contract with a
2 large number of producers of oil in the mid-continent field, by the terms of which contracts it is obligated and required to purchase approximately 70,000 barrels of crude oil per day, and in the course of its business it has a market for and outstanding contracts for the delivery of about 100,000 barrels of crude petroleum per day.

II. That in the development of your petitioner's property and business, as above stated, it became and was necessary for petitioner

to construct and maintain for the retention and preservation of the large stock of crude petroleum which it now has and owns, several hundred steel tanks of varying capacity, ranging from 26,000 barrels to 55,000 barrels each, upon lands purchased or leased for such purpose, and in gathering and marketing the products of its own wells and the oil purchased by it from others it became and was necessary for The Prairie Oil and Gas Company to invest a large amount of capital, aggregating many millions of dollars, in the construction of pipe lines leading from the producing wells in the mid-continent field to the tanks above mentioned, and from said tanks across the northern part of the State of Oklahoma, the State of Kansas, the State of Missouri, the State of Iowa, and the State of Illinois, to Griffith, in the State of Indiana, on the common carrier pipe line of the Indiana Pipe Line Company, also an eight-inch pipe line from a point on the public service pipe line of the Oklahoma Pipe Line Company at or near the eastern line of the State of Oklahoma, through the State of Arkansas to a point in the State of Louisiana near the north line of said State, where it delivers oil sold by it to the purchasers thereof, and all of which tanks and pipe lines, together with all of the other facilities and equipment provided, acquired, and owned by The Prairie Oil and Gas Company, and every part thereof, is necessary to the successful, economical, and profitable transaction and conduct of your petitioner's own private business.

3 III. That the only income which The Prairie Oil and Gas Company has, in the course of its business, as heretofore and now maintained and conducted, is derived from the sale of crude oil, which it either produces from its own wells or purchases from others. Its ability to maintain its business and any income therefrom is dependent upon the market conditions and its ability to make sales of crude oil owned by it. The oil of the mid-continent field is of such a character, grade, and consistency as makes it marketable in its crude state for any other than refining purposes, and the nature of the oil business is such that customers for crude oil for refining purposes must and will only purchase it in large quantities for immediate and future delivery, the nature of the business being such that your petitioner is dependent, in the making of contracts for the sale of its oil, absolutely upon its ability to make certain current and daily deliveries of its products according to the needs of its customers and the requirements of its contracts. Therefore and in such manner all the pipe lines, pumping stations and delivery facilities and equipment of every kind owned and employed by The Prairie Oil and Gas Company in the transportation of crude petroleum are essential and necessary in the daily conduct and prosecution of its own private business, as now conducted.

IV. There is produced in the mid-continent field, embracing parts of the States of Kansas and Oklahoma, from whence the supply of crude oil in which your petitioner deals is derived, crude petroleum

of certain and varying grades, qualities, and values, and the oils of these several grades, qualities, and values cannot be transported in pipe lines of the kind and construction of those now owned and employed by The Prairie Oil and Gas Company in its business, without mixture, so as to enhance the value of part and detract from the value of part, leaving the common stock resulting from such
4 mixture more valuable than the poorer grades, and less valuable than the best grades combined therein, by reason of which your petitioner is unable to take into its lines either the low grade or high grade of mid-continent crude petroleum and deliver the same oil or a like quantity of equal value at any point along its pipe lines, and on that account The Prairie Oil and Gas Company could not, if it would, engage in public service as a transporter of crude oil, receiving oil of the highest or lowest grades, qualities, and values, and deliver the same oil at destination, or a like quantity of equal value.

V. Your petitioner was organized as a corporation on or about the 15th day of December, 1900, with an authorized capital of $300,000, as "The Kansas Oil and Gas Company," which name was afterwards, by amendment of its charter, changed to "The Prairie Oil and Gas Company," and immediately entered upon its business as a private corporation, exploring for, producing, buying, and selling crude petroleum, and has continued that business down to this time. As the production of oil in the mid-continent field has grown from a few hundred barrels per day at the time The Prairie Oil and Gas Company began business in 1900 to approximately 200,000 barrels per day in 1908 and 1909, and as the capital invested in the oil business in the mid-continent field has increased from a few hundred thousand dollars at the time The Prairie Oil and Gas Company was organized to more than $100,000,000 at the present time, so has the private business of The Prairie Oil and Gas Company grown and developed to make necessary and require from time to time the increase of its authorized capital stock by amendment of its charter as follows, to-wit:

May 2, 1904, from $300,000 to $2,500,000;
June 15, 1905, from $2,500,000 to $7,500,000;
June 26, 1906, from $7,500,000 to $10,000,000;
December 11, 1907, from $10,000,000 to $20,000,000;
5 of which $18,000,000 has been issued and sold; and in the course of its business from when it began down to the present time, it has become necessary for The Prairie Oil and Gas Company, your petitioner herein, to borrow and issue bonds therefor, which are now outstanding, the sum of $15,000,000, all of which, together with the capital stock and the earnings of the company from 1902 to 1909, have been invested and expended in the business and property of this petitioner.

VI. That The Prairie Oil and Gas Company does now and at all times during its existence has conducted a private business, trans-

ported and marketed only its own oil, and it has not at any time had any pipe lines or other facilities which were not daily required to their normal capacity in the transaction and conduct of its own private business; that all its property, pipe lines, and facilities were purchased, provided, and acquired for its own private use in its own private business. It has never held itself out to the public as a public service corporation or been willing to devote any part of its property, resources, or facilities to the service of the public or any person other than itself. In the establishment and development of your petitioner's business it has received no rights, privileges, subsidies, or franchises from any National, State, or municipal government, save and except its charter of authority to transact business as a corporation, and all its pipe lines are constructed and maintained over and upon lands and rights of way owned by it, acquired by purchase.

VII. Heretofore the Interstate Commerce Commission, upon its own motion, instituted certain proceedings entitled " In the Matter of Pipe Lines, No. 4199," for the purpose of determining its jurisdiction over and concerning certain pipe lines in the United States, among which are the pipe lines of The Prairie Oil and Gas Company. Your petitioner and various other corporations and partnerships were made respondents, and on the 8th day of June, 1911, the Inter-
6 state Commerce Commission made a certain order in words and figures following to wit:

Interstate Commerce Commission.

ORDER.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 8th day of June, A. D. 1911.

Present Judson C. Clements, Charles A. Prouty, Franklin K. Lane, Edgar E. Clark, James S. Harlan, Charles C. McChord, Balthasar H. Meyer, commissioners.

No. 4199.

In the matter of pipe lines.

Complaint being made to this commission that the carriers hereinafter named, and each of them, have established certain rates, classifications, and regulations which was unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of the act to regulate commerce and acts amendatory thereof, and that the practices of said carriers, and each of them, in the conduct of business subject to said act are unjust, unreasonable, unjustly discriminatory, unduly preferential and prejudicial, and otherwise in violation of the provisions of said act, and good cause appearing therefor,

It is ordered that an inquiry be, and the same is hereby, instituted in the above-mentioned matters by this commission on its own motion, and that the rates, classifications, regulations, and practices of
7 the various corporations and persons engaged in the transaction of oil and other commodities, except water, and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe line and partly by water, subject to the act to regulate commerce and the acts amendatory thereof, and of each of them, to determine whether such rates, classifications, regulations, or practices, or any of them, are unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the said act, and to determine the manner and method in which the business of said corporations and persons and each of them is conducted.

It is further ordered, that the following corporations and persons engaged in such transportation subject to said act to regulate commerce and acts amendatory thereof, be, and each of them is hereby, made parties respondent to this proceeding, viz, The Buckeye Pipe Line Company, The Columbia Pipe Line Company, The Crescent Pipe Line Company, Cumberland Pipe Line Company (Incorporated), Emery Pipe Line, The Eureka Pipe Line Company, Gulf Pipe Line Company, Gulf Pipe Line Company of Oklahoma, Higgins Oil & Fuel Company, Indiana Pipe Line Company, National Transit Company, New York Transit Company, Northern Pipe Line Company, Producers & Refiners Oil Company (Limited), Producers Oil Company (Limited), Pure Oil Company, South West Pennsylvania Pipe Lines, Southern Pipe Line Company,
8 The Texas Company, United States Pipe Line Company, Acme Oil Company, Anchor Oil & Gas Company, Associated Oil Company, Associated Pipe Line Company, Central Oil Company of Los Angeles, Cornplanter Refining Company, Corsicana Refining Company, Dougherty & Son Refining Company, W. H., Evangeline Oil Company, Franklin Pipe Line Company, Guffey Petroleum Company, J. M., Gulf Refining Company of Louisiana, Industrial Pipe Line Company, Kansas Cooperative Refining Company, Kansas Crude Oil & Gas Company, Kansas Natural Gas, Oil & Pipe Line Improvement Company, Kasigan Oil, Gas & Power Company, Manhattan Oil Company, The Modelo Oil Company, National Pipe Line Company, National Refining Company, The Ohio Oil Company, Paragon Refining Company, Prairie Oil & Gas Company, Puente Oil Company, Pure Oil Company, Rio Bravo Oil Company, Security Oil Company, Standard Oil Company of California, Standard Oil Company of Kansas, Standard Oil Company of Louisiana, Sun
9 Company, Sun Pipe Line Company, Tidewater Oil & Pipe Company, Tidewater Pipe Company (Limited), Uncle Sam Oil Company, Uncle Sam Oil Company of Kansas, Union Oil Company of California, The Union Petroleum Company of Philadelphia,

Union Pipe Line Company, Vacuum Oil Company, Wellsville Refining Company.

A true copy.

[SEAL.] JUDSON C. CLEMENTS,
Chairman.

That said order was duly served on your petitioner. Thereafter, at certain hearings provided by the commission, testimony and other evidence having been offered, received, and considered by the commission, on the 28th day of March, 1912, the Interstate Commerce Commission made a further order, and caused the same to be duly served on your petitioner and the other respondents in said proceeding, propounding certain questions of law to each and all of the respondents in said proceeding, and requesting and directing that respondents appear before said commission in the city of Washington on the 10th day of May, 1912, for the argument and hearing of the questions of law submitted, as aforesaid.

VII. That on the 10th day of May, 1912, as directed in said order, your petitioner appeared and arguing orally the questions propounded as aforesaid, at the same time submitted its brief and argument in writing. Afterwards, on the 3d day of June, 1912, the Interstate Commerce Commission made, rendered, and published its report, in the nature of findings of fact and conclusions of law, accompanied by a further order of said commission in said proceeding, a copy of which report and order is hereto attached marked Exhibit "A," and the same is hereby made a part of this petition.

IX. That by the terms of said last-mentioned order your petitioner is required on or before September 1, 1912, to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce. That your petitioner has not now and never has had any schedules of rates and charges for the transportation of oil. It has never transported nor offered to transport any oil other than its own oil. Its incorporation was procured, its stock subscribed and sold, for the purpose of engaging in a private business, in manner and form that said business is now and heretofore has been conducted by your petitioner. That the stockholders and directors of The Prairie Oil and Gas Company have never given their consent, or in any manner authorized the managing officers of your petitioner company to divert the property owned by it or any part thereof from the necessary private uses in which it is now employed to the public service, or to the service of any other person, and the pipe lines of The Prairie Oil and Gas Company cannot, nor can any part thereof be employed in the transportation of oil for the public or any other person without impairment and destruction of the value of the same to its owner as a necessary, economical, and efficient means of carrying on, conducting, and maintaining the business in which

it is now engaged. That the order of said commission last above referred to and set out in Exhibit "A" to this petition, is illegal and void, for the reasons: First, because the Interstate Commerce Commission does not have and possess any jurisdiction or control over the pipe lines of this petitioner, or any lawful authority to make such order; second, because said order, should the same be made effective and be enforced, would impose all the burdens, liabilities, and
11 responsibilities of a common carrier upon this petitioner without its consent, and deprive it of its property, the use and control thereof, without due process of law, and in violation of the fourteenth amendment to the Constitution of the United States; and, third, because said order, should the same be enforced and become effective, would render the pipe lines of your petitioner ineffective and inefficient for the purposes for which they were constructed and ever since have been used, and appropriate the same to the service of the public, to the exclusion of the use thereof by the owner, which would be a taking of the private property of your petitioner for a public use without just compensation, in violation of the fifth amendment to the Constitution of the United States.

X. Your petitioner further avers that if said order of the Interstate Commerce Commission is allowed to become and be effective many suits for penalties would be brought against your petitioner by many persons interested in said order and its enforcement, and claiming to be injured by the acts of your petitioner, which suits would be prosecuted as aforesaid by very many persons in the judicial districts of the United States against your petitioner, whereby your petitioner would be subjected to a great multiplicity of suits, and great loss and damage would be inflicted upon it, all of which would greatly injure and embarrass your petitioner in the transaction of its business, unless said order be obeyed, and your petitioner thereby surrender and be deprived of the use and enjoyment of its own private property to its irreparable injury through the impairment and destruction of its ability to carry on the business in which it is now engaged and to which the present employment of its pipe lines is essential and necessary.

XI. Your petitioner further avers, notwithstanding the facts aforesaid, that said Interstate Commerce Commission maintains and intends to maintain, and will, unless the same is enjoined or suspended by the order of this honorable court, maintain the said
12 order as an effective order, and institute or suffer to be instituted the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience and violative of the property rights of this petitioner.

XII. Your petitioner therefore prays that upon the filing of this petition a temporary or interlocutory order be entered herein suspending the said order of the said Interstate Commerce Commission and restraining the enforcement thereof and restraining the said

Interstate Commerce Commission from taking any steps or instituting any proceedings to enforce said order, and upon the final hearing of this cause that a decree be entered herein setting aside and annulling said order of the said Interstate Commerce Commission herein complained of, and perpetually enjoining the enforcement of the same, and that respondent and its agents, servants, and representatives, and each and all of them, be perpetually enjoined from enforcing the said order and from taking any steps or instituting any proceedings for the enforcement of the same.

Your petitioner further prays that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, then and in that case an order be entered suspending the said order of said Interstate Commerce Commission restraining and enjoining the enforcement thereof until the hearing and final determination of the application for a temporary or interlocutory order prayed for herein, and your petitioner further prays that it be granted such other and further relief in the premises as justice and equity may require.

Your petitioner further prays that your honors grant unto it a writ of subpœna to the United States of America and that due service thereof be made on the respondents and upon the Interstate Commerce Commission, commanding them at a certain day and under a certain penalty therein to be specified to appear before this court and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under
13 oath being hereby expressly waived), and to stand and abide by such order and decree herein as to the court shall seem meet and agreeable to equity and good conscience.

PRAIRIE OIL AND GAS COMPANY,
By J. E. O'NEIL, *President.*
J. B. F. CATES,
W. S. FITZPATRICK,
Solicitors for Petitioner.

UNITED STATES OF AMERICA,
District of Columbia, ss:

J. E. O'NEIL, being first duly sworn according to law, deposes and says that he is the president of The Prairie Oil and Gas Company, the petitioner in the above-entitled cause; that he has read the foregoing petition and knows the contents thereof, and that the statements therein contained are true.

JAMES E. O'NEIL.

Subscribed and sworn to before me this 13 day of July, 1912.
[NOTARIAL SEAL.] G. F. SNYDER,
Notary Public.

My commission expires February 14, 1913.

27 *Appearance. Filed July 15, 1912.*

In the United States Commerce Court, No. 75.

THE PRAIRIE OIL & GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT.

To Mr. G. F. SNYDER,
Clerk of the United States Commerce Court,
Washington, D. C.:

I hereby enter the appearance of the Interstate Commerce Commission as intervening respondent, and of myself as its solicitor, in the above-entitled cause.

Dated Washington, D. C., July 15, 1912.

CHAS. W. NEEDHAM,
Assistant Solicitor, Interstate Commerce Commission.

28 In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 75.

Order extending time to answer. Entered August 7, 1912.

Upon application duly made in that behalf, and for good cause shown, it is ordered that the time within which the United States of America, respondent, may answer the petition filed in the above-entitled cause be, and the same is hereby, extended to and including September 1, 1912.

MARTIN A. KNAPP,
Presiding Judge.

29 In the United States Commerce Court.

THE PRAIRIE OIL & GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT, THE INTERSTATE Commerce Commission, intervening respondent. } No. 75.

Answer of the Interstate Commerce Commission. Filed August 12, 1912.

The Interstate Commerce Commission, intervening respondent in the above-entitled cause, now and at all times saving and reserving to itself all and all manner of benefit and advantage of exception to

the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as this respondent is advised is material for it to make answer unto, answering says:

I. This respondent admits that The Prairie Oil & Gas Company is a corporation duly organized in the year 1900, and now existing under the general incorporation laws of the State of Kansas. A copy of the original charter, with "Notes," is hereto attached, marked "Exhibit A," to which reference is hereby made.

30 This respondent alleges that at the time said charter was issued the constitution of the State of Kansas provided (art. 12, sec. 1) as follows: "The legislature shall pass no special act conferring corporate powers. Corporations may be created under general laws; but all such laws may be amended or repealed."

That the Legislature of the State of Kansas, by an act approved February 28, 1905 (chap. 315, sec. 1), provided that: "All pipe lines laid, built, or maintained for the conveyance of crude oil within the State of Kansas are hereby declared to be common carriers, and said conveyance of said oil shall be in the manner and under the restrictions in this act provided." (Sec. 3961, General Laws of Kansas.)

"It shall be the duty of every person, firm, association, or corporation operating under such pipe line to provide suitable and necessary receptacles for receiving such oil for transportation and for storage at the place of delivery * * *." (Id., sec. 3962.)

That in a certain proceeding in the Supreme Court of the State of Kansas entitled "The State of Kansas, on the relation of C. C. Coleman, attorney general in and for the State of Kansas, plaintiff, v. Standard Oil Co. of Indiana, a corporation, the Standard Oil Co. of Kansas, a corporation, and The Prairie Oil & Gas Co., a corporation, defendants," No. 15193, original, the Supreme Court, by a decree of ouster, restricted the charter and powers of the petitioner as

31 set forth in said decree. A copy of said decree is hereto attached, marked "Exhibit B." Said decree enjoined the petitioner from "making or carrying out any arrangements, contracts, agreements, understandings, trusts, or combinations * * * with a view or which tend to advance, reduce, or control the price or the cost to the producer or to the consumer, or to prevent the full and free competition in the importation, transportation, manufacture, or sale of crude petroleum or any of its products."

That in and by said charter, limited and restricted as aforesaid, the petitioner is authorized to transport crude oil; that there is no limitation, by virtue of ownership or otherwise, upon the crude oil which the petitioner may transport, nor is the petitioner limited to any one instrumentality by which it may carry on the business of transportation aforesaid.

That said petitioner, under the powers in its charter, is transporting crude oil by means of pipe lines from the State of Kansas and Oklahoma to Indiana, and over through route connections to New

York and other States, and is a common carrier under and subject to the act to regulate commerce.

This respondent admits that said petitioner under its charter aforesaid has authority to mine and produce crude oil, to purchase, store, and sell the same, and that in pursuance of these powers the said petitioner has acquired and operates producing oil wells, as set
32 forth in said petition; but respondent alleges that the great bulk of the crude oil transported by petitioner is produced by wells owned and operated by other persons and corporations.

This respondent admits that the petitioner has erected and owns storage tanks of various kinds and capacity for the storage of crude oil, and has large quantities of oil in store and is transporting the same to the refineries hereinafter mentioned; that the amounts and quantities so purchased, stored, and transported are unknown to this respondent, but respondent accepts the statements of the amounts thereof made in the petition herein as correct for the purposes of this suit.

This respondent alleges that the said oil wells and storage tanks of said petitioner are located in what is known and is hereafter described as the Mid-Continent field; that storage tanks are a necessary and essential equipment to and are a part of the transportation facilities operated by the petitioner.

II. This respondent admits that the petitioner, in the exercise of its charter powers and subject to the laws aforesaid, has, for the purpose of transporting crude oil from the producing wells in the Mid-Continent field to the refineries hereinafter described, constructed a system of pipe lines, consisting (1) of small pipes leading from the settling tanks of each producing well or group of wells to the main gathering lines of the petitioner; (2) a system of gathering lines consisting of larger pipe conveying said oil
33 to the receiving tanks and to the trunk lines, and (3) a trunk line extending through and from said Mid-Continent field to Griffith, in the State of Indiana, and there connecting with the pipe line of the Indiana Pipe Line Co.; also a trunk line extending from a point in Oklahoma through a part of Arkansas to a point in Louisiana, there connecting with the pipe lines of the Standard Oil Company of Louisiana; that the receiving and storage tanks of the petitioner are located mainly upon its gathering and trunk lines within the States of Oklahoma and Kansas; that by its said pipe lines it delivers crude oil from the Mid-Continent field to the refineries owned by the Standard Oil Company of New Jersey, or its affiliated companies, located at Neodesha, in southern Kansas, and Sugar Creek, near Kansas City, Mo.; that by its connection and through route arrangements at Griffith, Ind., it transports the oil from the Mid-Continent field to the refineries owned and operated by the Standard Oil Company of New Jersey, or by affiliated companies of said Standard Oil Company, at Whiting, Ind., and at points on the Atlantic seaboard at or near the cities of New York, Philadelphia,

and Baltimore; that by its southern lines and connections it transports oil from the Mid-Continent field to the refineries of the said Standard Oil Company or its affiliated companies, located at or near Baton Rouge, Louisiana.

This respondent denies that the right of way over which the
34 pipe lines of said petitioner are laid was purchased, provided, and acquired as private property without franchise privileges or obligations to the public. On the contrary, this respondent alleges (1) that for about 300 miles the pipe line of the petitioner is laid, maintained, and operated over the right of way of the Atchison, Topeka & Santa Fe Railway Company, a public carrier, which right of way was originally acquired by public grants or by power of eminent domain and is subject to all the rights, privileges, and powers in such cases retained and vested in the States, which rights, privileges, and powers appertain to the right of way acquired or occupied by said petitioner; (2) that wherever the pipe lines of the petitioner or any of them cross or are laid upon public highways, the privilege to so cross or lay pipes along said highways was granted or is permitted by the State, and such right of way is subject to all the superior rights and powers existing in the State over its public highways; and (3) that its right of way through the State of Oklahoma, formerly the Indian Territory and the Territory of Oklahoma, was in part granted to it by the United States under an application therefor filed by the petitioner with the Secretary of the Interior at Washington, D. C., in July, 1908, which right of way was granted, approved, and accepted by the petitioner, subject to the provisions of the act of March 11, 1904 (33 Stat. L., 65), and the published departmental regulations, and subject also to any prior valid existing
35 rights and adverse claims. That by act of Congress approved March 11, 1904 (33 Stat. L., 65), to cover the granting of rights of way for pipe lines, pumping stations, and storage tanks and their construction, operation, and maintenance in connection with the transportation and storage of oil, when the lands involved are Indian lands, the Secretary of the Interior was at the times aforesaid "authorized and empowered to grant a right of way in the nature of an easement for the construction, operation, and maintenance of pipe lines for the conveyance of oil and gas through any Indian reservation, through any lands held by any tribe or nation in the Indian Territory * * *. No such lines shall be constructed across Indian lands, as above mentioned, until authority therefor has first been obtained from, and the maps of the different locations of said lines approved by, the Secretary of the Interior: Provided, That the construction of lateral lines from the main pipe line establishing connection with oil and gas wells on the individual allotments of citizens may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location, when the consent of the allottee upon whose lands oil or gas wells may be located and all other allottees through whose lands said lateral pipe lines may pass has been obtained by the pipe line company: * * *."

That among the rules and regulations prescribed by the Secretary of the Interior, under authority of law, for the granting of rights
36 of way to pipe line companies, in force from December 21, 1906, to June 10, 1909, was the following: "And no application for the construction of a pipe line will be approved unless the applicant agrees that such pipe line shall be held to be a common carrier and agrees to all the provisions hereof."

And also: "The approval of any application for oil pipe lines and other privileges is on the condition that the permittees thereof shall accept and deliver shipments of oil at any regular station on their line."

That said regulations were in full force and effect at the time of the application of the petitioner for right of way through said Territories, and said right of way was approved by the Secretary of the Interior, accepted by petitioners, and its said line located and constructed, subject to the regulations aforesaid. Reference is hereby made to the published regulations aforesaid issued by the Department of the Interior.

That said petitioner is subject to and charged with all the duties, obligations, and requirements incident and appertaining to the grants of right of way as above set forth.

This respondent attaches hereto a map, marked "Exhibit C," showing generally the trunk lines of the petitioner and the connecting lines over which, by means of through routes, the petitioner transports crude oil to the refineries mentioned and to which reference is hereby made for further and more particular description thereof.

37 III. That the crude oil produced in the United States is described by "fields," and they are known as the Appalachian field, covering parts of the States of New York, Pennsylvania, West Virginia, southeastern Ohio, Kentucky, and Tennessee; the Lima-Indiana and Illinois field, covering parts of northwestern Ohio, Indiana, and Illinois; the Mid-Continent field, herein referred to, covering parts of the States of Kansas and Oklahoma; the Gulf field, covering parts of the States of Louisiana and Texas; the Caddo field, in Louisiana and Texas; and other fields in the States of California, Colorado, Wyoming, Michigan, and Missouri; that the annual products of crude oil within the United States, as shown by the official statistics for the calendar year 1910 (the last official figures available), was 209,556,048 barrels, of the value of $127,896,328; that of this total production the Mid-Continent field, for the year aforesaid, produced 53,157,386 barrels, of about the value of $31,974,082, or about one-fourth of the quantity and value of the total production of the United States; that the crude oil in the Mid-Continent field is produced from wells owned and operated by more than 2,000 operators; that over 80 per cent of the total production of the Mid-Continent field is received, stored, and transported by the petitioner, in the manner herein set forth, to the refineries owned by the Standard Oil Company of New Jersey, or its affiliated companies.

38 IV. That crude oil produced east of the Rocky Mountains is not much used in its natural state, and its market is limited to the refineries of crude oil; that heretofore the business of refining the crude oil and the transportation of it from the fields of production to the refineries have been, to a large extent, transacted under a common management or unified control, the pipe line being called an adjunct of the refinery; that the cost of transportation by means of pipe lines is approximately from 20 to 35 per cent of the cost of transportation by any other instrumentality; that by reason of the premises the producers of crude oil are wholly dependent for the sale of their product upon transportation by pipe lines to the refineries, and by reason of their location, as herein described, they can not sell or dispose of their said product except to the refineries and by means of said pipe lines.

That the Standard Oil Company of New Jersey and affiliated companies have refineries located as hereinbefore stated and are the largest purchasers of crude oil in the United States; that there are many other refineries in the United States, located upon the connecting pipe lines, to which shipments could be made by producers in said Mid-Continent field but for the restrictions made by the petitioners as herein set forth.

39 That in the original organization of the petitioner company the Standard Oil interests, represented by W. J. Young, of Pittsburgh, owned and held practically all of the capital stock; that after the increase of the capital stock of the petitioning company to $20,000,000, as set forth in the petition, of which $18,000,000 of said stock has been issued, and until the entry of a certain decree in the Circuit Court of the United States pursuant to an opinion of the United States Supreme Court, filed May 15, 1911, ordering a dissolution of the Standard Oil Company of New Jersey, the Standard Oil Company aforesaid, through or by one of its companies, held and owned $17,997,400 of the petitioner's outstanding stock; that the Standard Oil Company of New Jersey until the decree of dissolution aforesaid operated and controlled by stock ownership or otherwise all the refineries to which the petitioning company transported oil from the Mid-Continent field, which holding and control was held to be unlawful; that since the dissolution of the Standard Oil Company of New Jersey its said stock holdings in the petitioning company and in the corporations operating the refineries aforesaid have been distributed under the decree of said court and are now held by the stockholders of the Standard Oil Company of New Jersey, and the petitioning company still continues to deliver the oil transported by it from the Mid-Continent field to the said refineries and refuses to transport oil for said producers in said field to any other refineries than those owned and operated by said Standard Oil Company or said affiliated companies, thereby preventing free competition in the sale and transportation of crude oil from the Mid-Continent field.

40 V. This respondent admits that the petitioner produces approximately 12,000 barrels of crude oil per day, and that it receives from the other producers aforesaid in the Mid-Continent field approximately 70,000 barrels of crude oil per day in the course of its business.

This respondent alleges that to control the output of crude oil in the Mid-Continent field the management and operation of the refineries of the Standard Oil Company and the pipe lines of the petitioner aforesaid were centered in a common unified control by means of the organizations aforesaid; that said petitioner's pipe line has refused and does refuse to receive into its storage tanks or pipes crude oil from the Mid-Continent field, except upon the condition that each owner or operator of a well or group of wells execute, enter into, and perform an authorization agreement, in words and substance following, to wit:

"JANUARY 1ST, 1909.

"TO THE PRAIRIE OIL & GAS COMPANY:

"The undersigned certify and guarantee that they are the legal owners of ——— ——— wells Nos. 1 and up on the John Doe farm, NE¼ sec. 26, Twp. 24, R. 14 E., Summit Township, Montgomery County, State of Kansas, including the royalty interest, and until further notice you will give credit for all oil received from said wells as per directions below."

41

Credit to—	Division of interest.	Post-office address.
Blue Sky Oil Company	W. I., ⅞	Gray Point, Kansas.
John Doe	Royalty, ⅛	Doeville, Kansas.

"The Prairie Oil & Gas Company is hereby authorized, until further notice, to receive oil from said wells for purchase from said parties severally in the proportions named, subject to the following conditions:

"First. The oil run in pursuance of this division order shall become the property of the Prairie Oil & Gas Company as soon as the same is received into its custody.

"Second. The oil received in pursuance of this division order shall be paid for to the well owners or their assigns in proportion to their respective interests shown above, at the market price paid by the Prairie Oil & Gas Company for the same kind and quality of oil on such day, within two months after said oil is run, on which the owner shall notify the Prairie Oil & Gas Company of his election to take said price for the same, or in case the owner shall make no election within two months after the oil is run, then at the market price as aforesaid at the opening on the first business day after the expiration of said two months.

"Third. The Prairie Oil & Gas Company shall deduct three per cent from all oil received from wells into its custody, on account of dirt and sediment, and, in addition, shall deduct one-twentieth
42 of one per cent for each degree of artificial heat above normal temperature to which said oil shall have been subjected, and oil shall be steamed when necessary to render it merchantable.

"Fourth. The undersigned agree, in case of any adverse claim of title, to furnish the Prairie Oil & Gas Company satisfactory evidence of title, or in case of failure to do so, to furnish satisfactory indemnity, upon reasonable demand, against such adverse claim or claims, and that the said the Prairie Oil & Gas Company may retain the purchase price of the oil until we do so, or until the dispute as to ownership is settled.

"BLUE SKY OIL CO.,
"By DICK ROE, *President.*
"JOHN DOE.

"Witness:
"OSCAR CORNTASSEL.
"WILLIAM LAUD.

"At the time of the delivery of such oil, so purchased, into the pipe lines of this company, there is delivered by a representative of the company, styled 'a gauger,' a receipt called a 'Run ticket' showing certain facts from which the amount of oil taken can be accurately determined, which 'Run ticket' is in substance and form as follows, to wit:

43 "JANUARY 5TH, 1909.

"Dist. No. 1.
"Ticket No. 8.
"Blue Sky Oil Company, owner of Well Nos. 1 and up. John Doe farm."

Tank No. 2525.			Feet.	Inches.	Office calculations.
Size 250.	Oil.	1st meas't.	7	2	
		2d M....	1	.....	
Steamed 92 degs.	B.	1st M....	.....	10	
	S.	2d M....	.....	10	185 bbls.
Cold 60 degs.	Water.	1st M....	.....	1	
		2d M....	.....	1	
By Wm. Wilder. Station: Cameron. Remarks: None.					Operator's check C. K.

"Time {1st meas't. / 8 a. m.

"HIRAM GREEN,
"*Gauger.*
"JOHN SMITH,
"*Well Owner's Witness.*"

"Time { 2nd meas't. / 4 p. m. }

"HIRAM GREEN,
"*Gauger.*
"JOHN SMITH,
"*Well Owner's Witness.*"

"This ticket covers all claims for allowance. The oil represented by this ticket was received and run as the property of the Prairie Oil & Gas Company."

44 That the cost and profits to the petitioner of transporting, including necessary storing and delivery of said crude oil aforesaid, is unknown to your orator, but it is included in, paid, and realized by the petitioner out of the difference between the price paid at the well under said authorization agreements and the price received at the refinery, all of which is within the knowledge of the petitioner; that the prices allowed to the producers, referred to in said agreements, are fixed and posted by the petitioner, and in the determination thereof the producers of oil have no voice whatsoever, the said prices being fixed arbitrarily by the petitioner and the refineries, excepting that the producer has 60 days within which he may elect the posted price he will receive for his oil already delivered, and if no election is made by the producer settlement therefor is made at the price prevailing at the end of 60 days from the receipt of the oil by the petitioner; that the oil transported and delivered at the refineries is settled for and the amount allowed by the refinery for the crude oil, including storage and transportation, is paid to the petitioner in monthly settlements, as respondent is informed, the manner and method of arriving at the price at the refinery and at the wells being unknown to this respondent.

This respondent alleges that the petitioner holds itself out to all producers in the Mid-Continent field as ready and willing to make connection with wells and to receive crude oil from any and

45 all producers upon the authority and conditions above set forth. That the production of crude oil, and its transportation by pipe lines, as aforesaid, is of comparatively recent origin in the United States; that the character of said transportation and the status, rights, and obligations of the carrier of crude oil by pipe lines has become, by reason of its volume and the importance thereof to the producing and consuming public, a matter of grave concern and widespread importance, resulting in remedial legislation by several States and by Congress.

That by reason of the manner of conducting the business of transportation aforesaid, the inability of and the prohibition upon the producers of crude oil to have their oil transported by pipe lines as common carriers and to select the refinery and markets to which they ship, the State of Kansas, as hereinbefore set forth, by legislative enactment declared that all pipe-line companies transporting crude oil should be common carriers.

That in the exercise of its plenary power to regulate interstate commerce for the public welfare, the Congress of the United States, by acts approved June 29, 1906, and June 18, 1910, declared that the provisions of the act to regulate commerce, etc., "shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common car-
46 riers within the meaning and purpose of this act" * * *, and "that every common carrier subject to the provisions of this act shall file with the commission created by this act, and print and keep open to public inspection, schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established."

This respondent alleges that by reason of the premises and the act of Congress aforesaid the petitioner, so long as it engages in interstate transportation of crude oil by pipe lines, is a common carrier subject to the said act to regulate commerce.

VI. This respondent denies each and every allegation in said petition contained, to the effect that the said petitioner does not hold itself out to receive and transport all crude oil produced in the Mid-Continent field by any producer thereof, or that it does not offer to transport from one State to another crude oil for all persons, firms, and corporations engaged in producing oil of all grades in the Mid-Continent field upon the conditions herein set forth. This respondent further denies, upon the facts and premises aforesaid, that the ability of the petitioner to carry the oil which it produces in the Mid-Continent field will be interfered with by a compliance with the order in controversy; or that the supply of crude oil from the Mid-Continent field to all refineries purchasing the
47 same will be lessened by a compliance with the order in controversy. This respondent also denies that a compliance with said order will render it impossible for the petitioner to transport all the oil offered to it for transportation; or that it can not transport crude oil through its pipe line for several owners or shippers; or that it has no rates and can make none for such transportation; on the contrary, respondent alleges, in view of the facts aforesaid, that the petitioner does now receive for storage and transportation all the crude oil offered it in said field and does store or transport over 80 per cent of the annual production of said field; that it, with many other carriers, sends shipments through connecting pipe lines and delivers single and independent shipments to the refineries at the points aforesaid upon rates fixed and determined therefor, the segregation of such shipments and charges by pipe lines being of daily and constant occurrence.

This defendant further denies each and every allegation in said petition contained, to the effect or in substance that a compliance with said order will operate to deprive the petitioner of its property without due process of law; or that it will to any degree confiscate or take the property of the petitioner for public uses without due compensation; or that it will in any manner whatsoever deprive the petitioner of its constitutional rights or any of them under the Constitution of the United States.

And further answering the allegations referred to in this
48 paragraph, respondent alleges that the constitutional power of Congress to regulate commerce between the States does not in any manner depend upon, nor is it in any degree modified or limited by, the fact that such commerce or any of it is carried on by a person, firm, or corporation owning or holding the title to the subjects so transported; but on the contrary the power of Congress extends to the transportation of any physical property or thing from one State to another State without regard to the ownership of the subject or the ownership of the instrumentality or the status of the agency engaged in such commerce. That the constitutional power of the Congress of the United States over all interstate commerce is plenary, and Congress may declare upon what conditions any interstate commerce may be carried on and the obligations which the agency engaged in such commerce shall assume. That as the sovereign power over the subject of interstate commerce, Congress may prohibit or in any other manner whatsoever regulate such interstate commerce, and all persons, firms, or corporations, while not compelled to engage in such interstate commerce, are, when so engaged, in duty bound to observe and perform all laws and regulations for the conduct of such interstate commerce prescribed by Congress or by this respondent under the act to regulate commerce. That by virtue of the premises and the legislation aforesaid the petitioner, if it continues to engage in the transportation of crude oil by means of pipe lines from one State to another State in the United States,

is a common carrier subject to the act to regulate commerce
49 and must observe and perform each and all of the duties and obligations pertaining thereto, as set forth in, or authorized by, the said act to regulate commerce.

VII. Further answering said petition, and each and every allegation therein to which this paragraph is responsive, this respondent denies each and every allegation or part thereof which is contrary to the facts and conclusions stated by this respondent in its said report and order, copy of which is hereto attached, or which is contrary to any allegation or allegations of fact herein contained. This respondent also denies that in the hearing and determination of the matters and things set forth and referred to in the report and order herein complained of—being the order In the Matter of Pipe Lines, No. 4199—this respondent acted arbitrarily, or without power or authority in the premises, or that the petitioner did not have a full and fair hearing regarding the matters and things involved in said

proceeding and order, or that in any particular whatever this respondent committed any errors or mistakes of law in arriving at its findings and conclusions set forth in said report or in making said order. On the contrary, this respondent alleges that in the hearing and determination of said proceeding, No. 4199, aforesaid, this respondent acted in strict conformity with the requirements of the act to regulate commerce and each provision thereof pertinent to such proceeding and every question involved therein, and
50 within its several powers under said act; that said report and order in controversy, a copy of which is hereto annexed, marked "Exhibit D," and made a part hereof, was and is in strict conformity with said act of Congress approved June 18, 1910, requiring all carriers subject to said act operating pipe lines to file with this respondent schedules showing all rates and charges for the transportation of oil charged or to be charged by them, respectively.

This respondent denies that this honorable court has jurisdiction to review or determine the wisdom or expediency of an act of the Congress of the United States involving public policy or public welfare in the regulation of any interstate commerce as prayed in said petition; and this respondent avers that its findings of fact and its determination, set forth in said order, are binding and conclusive upon the petitioner and all others concerned therein.

All of which matters and things this respondent is ready to aver, maintain, and prove, as this honorable court shall direct, and prays the same advantage as to each and all the matters and things aforesaid as this respondent would be entitled to if the same were specially pleaded or set forth by way of demurrer or motion to dismiss the petition.

And having fully answered said petition, this respondent prays to be hence dismissed, with its reasonable costs and charges in its behalf sustained.

INTERSTATE COMMERCE COMMISSION,
By CHARLES W. NEEDHAM, *Its Solicitor.*

51 CITY OF WASHINGTON,
District of Columbia, ss:

C. C. MCCHORD, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true as to the matters within the knowledge of the commission, and as to the other matters he believes it to be true.

C. C. MCCHORD.

Subscribed and sworn to before me, George B. McGinty, a notary public within and for the District of Columbia, this 10th day of August, 1912.

[SEAL.] GEORGE B. MCGINTY,
Notary Public.

52 EXHIBIT A.

Charter.

The undersigned, citizens of the State of Kansas, do hereby voluntarily associate ourselves together for the purpose of forming a private corporation under the laws of the State of Kansas, and do hereby certify:

First. That the name of this corporation shall be the Kansas Oil and Gas Company.

Second. That the purposes for which this corporation is formed are to explore for, mine, produce, purchase, sell, store, refine, transport, and manufacture petroleum oil and its products and other oils, and to explore for, mine, produce, purchase, sell, and transport natural gas.

Third. That the place where its business is to be transacted is at the city of Neodesha, Wilson County, State of Kansas.

Fourth. That the term for which this corporation is to exist is fifty (50) years.

53 Fifth. That the number of directors of this corporation shall be five (5) and the names and residences of those who are appointed for the first year are: W. J. Young, Pittsburgh, Pennsylvania; R. W. Cummins, Swissvale, Pennsylvania; O. A. Evans, Neodesha, Kansas; H. B. Scott, Neodesha, Kansas; E. T. Patterson, Neodesha, Kansas.

Sixth. That the estimated value of the goods, chattels, lands, rights, and credits owned by the corporation is three hundred thousand dollars.

That the amount of the capital stock of this corporation shall be three hundred thousand dollars, and shall be divided into three thousand shares, of the par value of one hundred dollars each.

Seventh. That the names and residences of the stockholders of said corporation, and the number of shares held by each, are as follows, to wit:

Names.	Residences.	Number of shares.
W. J. Young	Pittsburgh, Pa	2,996
R. W. Cummins	Swissdale, Pa	1
O. A. Evans	Neodesha, Kans	1
H. B. Scott	Neodesha, Kans	1
E. T. Patterson	Neodesha, Kans	1

54 In testimony whereof, we have hereunto subscribed our names this 15th day of December, A. D. 1900.

(Signed) W. J. YOUNG.
R. W. CUMMINS.
O. A. EVANS.
H. B. SCOTT.
E. T. PATTERSON.

NOTE.—The foregoing charter was duly acknowledged, in accordance with the laws of the State of Kansas, and filed in the office of secretary of state. Afterwards its name was changed to the Prairie Oil and Gas Company and its capital increased from time to time, in accordance with the general corporation laws of the State of Kansas, as follows: May 2, 1904, from $300,000 to $2,500,000; June 15, 1905, from $2,500,000 to $7,500,000; June 26, 1906, from $7,500,000 to $10,000,000; December 11, 1907, from $10,000,000 to $20,000,000.

55 EXHIBIT B.

In the Supreme Court of the State of Kansas.

THE STATE OF KANSAS, ON THE RELATION OF C. C. COLEMAN, attorney general in and for the State of Kansas, plaintiff,
v.
STANDARD OIL COMPANY OF INDIANA, A CORPORATION; The Standard Oil Company of Kansas, a corporation; and The Prairie Oil and Gas Company, a corporation, defendants. } No. 15193.

JOURNAL ENTRY.

Now, on this 15th day of June, A. D. 1911, this cause comes on for final disposition and judgment, the plaintiff appearing by John S. Dawson, attorney general, its attorney, and the defendants, Standard Oil Company, an Indiana corporation, and the Standard Oil Company, a Kansas corporation, appearing by Alfred D. Eddy, Robert W. Stewart, R. R. Vermilion, and Earle W. Evans, its attorneys, and the defendant, the Prairie Oil and Gas Company, a Kansas corporation, appearing by J. B. F. Cates, J. D. McFarland, and W. S. Fitzpatrick, its attorneys. And the court, after hearing the statements and arguments of the parties and being fully ad-
56 vised in the premises, finds that the parties hereto have entered into and filed herein a stipulation for judgment, the terms of which are hereby approved, and pursuant thereto

It is by the court considered, ordered, adjudged, and decreed as follows:

I. That the defendant, Standard Oil Company, an Indiana corporation, its officers, agents, and employees, be, and they are each of them hereby, ousted, prohibited, restrained, and enjoined forever from doing and performing within the State of Kansas each, every, and all of the matters and things following, to wit:

1. Engaging within the State of Kansas in the business of producing and selling crude petroleum except for fuel and power purposes.

2. Selling for the purpose of destroying competition any petroleum or refined or manufactured product of petroleum at a lower rate or price in one section, community, or city within the State of Kansas than it charges for the same in another section, community, or city

therein after equalizing the distances from the point of production, manufacture, or distribution and freight rates therefrom.

3. Making and executing any contract or contracts, arrangements, or understandings whereby any person, firm, or corporation shall be required or is bound to refrain from the purchase, handling, or sale of petroleum or petroleum products manufactured or sold within the State of Kansas by any other person, firm, or corporation.

4. Selling under different brands or trade names any oil or oils of the same value and quality at different prices for the purpose of destroying competition.

57 That the license or permission heretofore issued to the said defendant by the charter board of the State of Kansas as a foreign corporation be, and the same is hereby, forfeited, cancelled, and annulled in so far as same granted it the authority to do and perform any of the matters and things which by this decree it is ousted and enjoined from doing.

II. That the defendant, the Standard Oil Company, a Kansas corporation, its officers, agents, and employees, be, and they and each of them are hereby, ousted, prohibited, restrained, and enjoined from doing and performing each, every, and all of the matters and things following, to wit:

1. Engaging in the business of producing and selling crude petroleum.

2. Establishing and maintaining tank stations or supply depots except at its refinery at Neodesha, Kansas, for the purpose of supplying refined oil to customers.

3. Selling, merchandising, or marketing the refined products of petroleum, or any of them, except to wholesale dealers in the same.

That all and singular the parts and portions of the charter of the defendant, the Standard Oil Company, a Kansas corporation, by which authority was vested in it to do any of the matters and things which by this decree it and its officers, agents, and employees are ousted and enjoined from doing, be, and the same are hereby, forever forfeited, cancelled, and annulled.

It is further adjudged, ordered, and decreed that it shall not be considered a violation of the terms of this decree for the defendant, the Standard Oil Company, a Kansas corporation, to sell, dis-

58 pose, and transfer all of its property of whatever kind and character to the defendant, Standard Oil Company, an Indiana corporation, or for the defendant, Standard Oil Company, an Indiana corporation, to purchase and otherwise acquire the ownership of the same, or for the said defendant, the Standard Oil Company, a Kansas corporation, to surrender its charter and retire from business.

III. That the defendant, the Prairie Oil and Gas Company, a Kansas corporation, its officers, agents, and employees, be, and they and each of them are hereby, ousted, prohibited, restrained, and enjoined forever from doing and performing each, every, and all of the matters and things following, to wit:

1. Engaging in the business of manufacturing and refining crude petroleum into any of the products thereof.

2. Establishing and maintaining tank stations or supply depots for the purpose of supplying refined oil to customers.

3. Selling, merchandising, or marketing the refined products of petroleum, or any of them, to the retail or jobbing trade or to customers.

Provided, however, that it shall not be deemed a violation of this decree for said defendant, the Prairie Oil and Gas Company, to manufacture gasoline or naphtha from natural gas and sell or otherwise dispose of the same, subject, however, to the limitations and restrictions prescribed in this decree as to petroleum and its products.

That all and singular the parts and portions of the charter of the defendant, the Prairie Oil and Gas Company, a Kansas corporation, by which authority was vested in it to do any of the matters
59 and things which by this decree it and its officers, agents, and employees are ousted and enjoined from doing, be, and the same are hereby, forfeited, cancelled, and annulled.

IV. That the defendants herein and each of them, and each and all of their respective officers, agents, and employees, be, and they and each of them are hereby, ousted and permanently enjoined from doing and performing within the State of Kansas each, every, and all of the things following, to wit:

1st. Making or carrying out any arrangements, contracts, agreements, understandings, trusts, or combinations between themselves or any two or more of them, or with any other persons, firms, or corporations, with a view, or which tend, to advance, reduce, or control the price or the cost to the producer or to the consumer or to prevent the full and free competition in the importation, transportation, manufacture, or sale of crude petroleum, or any of its products.

2d. Conspiring or combining with themselves or with any other persons, firms, or corporations within or without the State of Kansas for the purpose of monopolizing the production, transportation, manufacture, or sale of crude petroleum, or any of its products.

3d. Issuing or owning trust certificates of stock or entering into any combination, contract, agreement, arrangement, or understanding with any person or persons, corporation or corporations, or with any stockholder or director thereof, or issuing or owning stock for the purpose of effecting or attempting to effect any combination, contract, agreement, arrangement, or understanding to place the man-
60 agement or control of the aforesaid several businesses or the manufactured product thereof in the hands of any trustee or trustees, holding company or agency, with the intent to limit or fix or to the effect of limiting or fixing the price or to lessen the production, transportation, manufacture, or sale of crude oil, or any of its products.

4th. To fix any standard or figure whereby the price to the public of crude petroleum, or any of its products, shall be in any manner controlled or established.

5th. To make, or enter into, execute, or carry out any contract, obligation, agreement, arrangement, or understanding of any kind

or description by which they, or any of them, shall bind, or have to bind, themselves not to produce, transport, sell, manufacture, or dispose of crude petroleum, or any of its products, or by which they, or any of them, shall agree in any manner to keep the price thereof at a fixed or graded figure, or by which they or any of them shall in any manner establish or settle the price thereof between themselves or between themselves and others to preclude the free and unrestricted competition therein, or by which they shall agree to pool, combine, or unite any cause they may have in connection therewith that its price may in any manner be affected.

V. The court hereby retains jurisdiction of this case for the purpose of supervising the carrying out of the provisions of this decree and the enforcement thereof and the making of such orders in relation to the execution and enforcement of this decree as may seem proper.

61 VI. That the plaintiff do have and recover against said defendants the costs of this action taxed at ——— dollars.

O. K.

JOHN S. DAWSON,
Attorney General for the State of Kansas.

ALFRED D. EDDY,
ROBERT W. SEWART,
R. R. VERMILION,
EARLE W. EVANS,
Attorneys for the defendants, the Standard Oil Co., a Kansas corporation, and Standard Oil Company, an Indiana corporation.

J. D. MCFARLAND,
J. B. F. CATES,
W. S. FITZPATRICK,
Attorneys for the defendant, the Prairie Oil and Gas Company.

(Indorsed:) 15193, State ex rel *v.* Standard Oil Co. et al. Final judgment. Filed June 15, 1911. D. A. Valentine, clerk Supreme Court.

76 *Order for appearance. Filed October 24, 1912.*

United States Commerce Court,

Case No. 75.

PRAIRIE OIL & GAS CO., PETITIONER.
vs.
UNITED STATES, RESPONDENT.

The clerk will enter my appearance as counsel for the petitioner.

(Name.) L. W. KEPLINGER,
(P. O. address.) *644 Min. Av.,*
Kansas City, Kansas.

NOTE.—Must be signed by a member of the bar of the United States Commerce Court. Individual and not firm names must be signed.

77 *Affidavit of J. E. O'Neil. Filed October 29, 1912.*

In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
versus
THE UNITED STATES OF AMERICA, RESPONDENT; and the Interstate Commerce Commission, intervening respondent. } No. 75.

Affidavit.

UNITED STATES OF AMERICA,
Washington, D. C., ss:

J. E. O'NEIL, of lawful age, being first duly sworn, on his oath, deposes and says:

I am president of the Prairie Oil and Gas Company, and as such have general charge of the management of its business. My business headquarters are located at Independence, Kansas, where said company maintains its general office and principal place of business.

I have been engaged in the business of producing crude petroleum oil, constructing and operating pipe lines, continuously for more than twenty years, and have a practical knowledge of such business.

The company was organized in December, 1900, with a capital stock of $300,000, and engaged in the business of producing and marketing crude oil.

At that time the production of oil in the Mid-Continent field was confined to a few counties in the southeastern part of the State of Kansas, and the combined production of the entire field did not exceed 500 barrels per day.

There were no pipe lines in the field at that time, except small gathering lines from producing wells to storage tanks,
78 and the only available market for crude oil in that section was at the refinery of the Standard Oil Company, a Kansas corporation, at Neodesha, Kansas.

The first storage tanks of The Prairie Oil and Gas Company were erected at or near Neodesha, Kansas, and the company entered into contract to supply and furnish the Neodesha refinery with crude oil for its continuous operation.

During the years 1901 and 1902 the prospecting developed a number of oil pools throughout the southeastern part of Kansas, and materially increased the production of the field.

There were no markets, other than as above stated, of consequence within the State of Kansas or any of the States surrounding Kansas, for the crude oil of the Mid-Continent field.

Under these circumstances The Prairie Oil and Gas Company began buying crude oil from many of the producers in the Mid-Continent field, and in order to accomplish this, extended pipe lines from

the producing wells of the persons and corporations from whom it purchased oil to its storage tanks near Neodesha, in Wilson County, Kansas.

In 1903 oil was discovered in the Indian Territory, and a production developed which materially increased the output of the Mid-Continent field.

The capacity of the Neodesha refinery at that time was only 500 barrels per day, and of the oil produced and purchased by The Prairie Oil and Gas Company, amounting to about 3,000 barrels per day during the month of August, 1903, by far the greater part was necessarily put in storage.

In 1904 the Standard Oil Company of Indiana built a refinery near Kansas City, at Sugar Creek, in the State of Missouri, and in order to supply such refinery with crude oil, the Prairie Company constructed an eight-inch pipe line from its storage tanks in the State of Kansas to the refinery.

This pipe line was completed to the Sugar Creek refinery about the month of October, 1904, and by reason of its construction the market for Mid-Continent oil was materially increased.

79 While the company bought all the oil it could handle with its capital and facilities, and in the month of August, 1904, did handle oil to amount of a daily average of between 17,000 and 18,000 barrels, there was still a considerable amount more than that produced in the the Mid-Continent field, for which there was no market demand and no adequate marketing facilities to take care of.

During the years 1904, 1905, and 1906, in addition to the refinery that was built at Sugar Creek, the refinery at Neodesha, Kansas, was materially enlarged, and there were a number of small refineries built and put in operation at various points in southeastern Kansas.

Notwithstanding these increased markets and marketing facilities, the production of the field was rapidly increasing, so that during the latter part of 1904 this company was accumulating more oil that it could market, at the rate of 500,000 barrels per month.

The Standard Oil Company of Indiana, which owned the refinery at Sugar Creek, Missouri, also owned a large refinery at Whiting, Indiana, and offered this company a market for substantial quantities of oil of the same grade and quality that was being furnished to it at its Sugar Creek refinery, for use in its refinery at Whiting, Indiana.

Freight rates on oil from the Mid-Continent field to Whiting, Indiana, were so high that oil could not be profitably shipped by rail to Whiting in competition with the oil of Illinois, Indiana, and Ohio, and it became necessary to extend the pipe line of this company from a point near the Sugar Creek refinery, in the State of Missouri, to Griffith, Indiana, the nearest point at which a common-carrier pipe line could be reached as a means of marketing Mid-Continent oil in the Whiting and other eastern markets.

We began the construction of such a line in 1904 and laid the line through to Griffith, Indiana, in October or November,
80 1905, but did not get all the pumping stations erected until 1906, so that the line could be operated to its full capacity.

From the time the company began business down to about a year ago, it never had the capital and facilities to handle all the oil that was offered it.

The production of the Mid-Continent field increased rapidly up to October, 1907, at which time there were estimated to be 10,958 producing oil wells in the field, with an estimated daily production ranging from 260,000 to 300,000 barrels.

At that time there were nineteen refineries operating in the Mid-Continent field, having a combined capacity of approximately 7,000 barrels of oil per day, which did not buy from The Prairie Oil and Gas Company, but produced and purchased oil in the Mid-Continent field in competition with The Prairie Oil and Gas Company.

Also, The Texas Company owned and operated a pipe line from the Mid-Continent field to the Gulf of Mexico, with a capacity of about 22,000 barrels per day.

And the Gulf Pipe Line Company owned a pipe line from the Mid-Continent field to Port Arthur, in the State of Texas, with a daily capacity of from 22,000 to 24,000 barrels.

Both The Texas Company and the Gulf Pipe Line Company held themselves out to the public as common carriers of crude oil, and both such lines purchased oil in the Mid-Continent field and transported the same to their customers for such product, to the full capacity of said lines.

Some of the oil transported by the Gulf Pipe Line Company and The Texas Company, through their respective lines, is marketed in the State of Texas, and a considerable amount is transported from the termini of said lines by water to points on the Atlantic coast and sold to refineries located in the same vicinity as those which purchase oil from The Prairie Oil and Gas Company.

81 Since the construction of its pipe line to Griffith, Indiana, The Prairie Oil and Gas Company has been enabled, by shipment over common-carrier lines east of that point, to establish a trade for its Mid-Continent oil in the States of Indiana, New York, Pennsylvania, and New Jersey, and from time to time it has been necessary, as its trade east of Griffith, Indiana, increases, to increase the capacity of its pipe lines from the Mid-Continent field to Griffith.

This increase has been accomplished by laying new lines or loops in connection with established lines, of different sizes of pipe, for varying distances between pumping stations, and varying in size from six to twelve inches.

The lines of The Prairie Company were so constructed with a view to increasing the capacity of said line, and also with a view to mixing the oil in transit in such manner as to enable it to deliver, at points of delivery, a uniform grade of Mid-Continent oil.

Such mixture, in order to accomplish the delivery of a uniform grade, is made necessary by reason of the fact that different parts of the Mid-Continent field and different oil-producing levels in the geological formations found in the field produce varying and different grades, qualities, and values of crude oil, and for the further fact that much of the oil which is now being marketed by the company is old oil, which has been standing in tankage for a number of years, and by reason thereof, through deterioration, has become less valuable for refining purposes than fresh oil currently produced in the field.

The Prairie Oil and Gas Company buys oil of all grades produced in the Mid-Continent field, ranging from 28 to 44 degrees gravity (Baumé test), and is required by its customers to sell and deliver oil testing 32 degrees or better, so that it would be unable to market the lower grades of Mid-Continent crude oil, and much of the oil
82 it has now in storage, by any other means than by mixing the same with high-gravity oil, and such mixture can only be accomplished profitably by means of the loops and gate connections employed in the construction of its pipe lines, as they are now constructed and operated.

Crude oil is forced through pipe lines by means of large, powerful pumps, erected at convenient points along the pipe line, at slightly varying distances from 40 to 50 miles, and at each pumping station there are two large steel tanks, called "working tanks," which are connected together, and the oil going into the station is pumped into one tank and going out of the same station is pumped out of the other tank.

These "working tanks," so called, are necessary to avoid the necessity of shutting down the entire line in case of a break in the pipe line between two stations, an explosion in the station, or any accidental interference with the operation of a part of the line, and they are also useful and beneficial in the mixing of oils of the different qualities and values in process of transportation.

In the Mid-Continent field, in the month of May, 1912, there were 21,485 producing oil wells, capable of producing an estimated average daily production of about 145,000 barrels.

The Prairie Oil and Gas Company owned 1,873 of these wells, which produced in the aggregate an average of 11,557 barrels per day.

The Prairie Oil and Gas Company was then obligated by contracts with various producers of crude oil in the Mid-Continent oil field, in form and substance as set out in its brief filed in this cause, to purchase and receive approximately 70,000 barrels of crude oil per day, and had outstanding contracts for delivery of about 100,000 barrels of crude oil per day, and the volume of business done by this company at the present time is approximately the same as it was in May of this year.

83 All of the pipe lines with their equipment, all of the property and facilities used and employed by The Prairie Oil and

Gas Company in its business, and all of the oil stored, transported, and sold by it are its own property.

All of its property was either constructed or purchased by it, and every part and parcel thereof is now, and at all times since its acquisition has been, necessary and employed to its full capacity in the transaction of the company's own private business.

The Prairie Oil and Gas Company has never exercised the right of eminent domain, and in none of the States in which its pipe lines are located, except in the States of Indiana and Oklahoma, does the law authorize or permit a private corporation to exercise the right of eminent domain in the construction, operation, or maintenance of a pipe line for the transportation of oil. Only about eight miles of the company's pipe line is in the State of Indiana, and the laws of Oklahoma deny a foreign corporation the right of eminent domain for the construction of pipe lines.

All of the pipe lines and pumping stations of the Prairie Oil and Gas Company are laid and constructed upon lands and rights of way owned by it and acquired by contract; at points where its pipe lines cross public highways or railroads a right of way has been purchased from the owners of the lands abutting on such highway or railroad right of way, and all of its property and rights in property have been acquired by construction or purchase under the authority of its charter to engage as a corporation in the business in which it is now engaged and at all times heretofore has been engaged.

The Prairie Oil and Gas Company has never held itself out to the public as willing to transport oil for others; it has never
84 transported any oil other than its own, and it has never had any facilities with which oil might be transported that were not needed for its own use in the transaction and conduct of its own private business.

The Mid-Continent oil is of such a grade and character that the same is marketable in large quantities, for refining purposes only.

The markets located in proximity to the Mid-Continent field are grossly inadequate to use and consume the daily production and output of that field. Hence it is necessary, to carry on the business in which The Prairie Company is engaged, to seek and invade markets for crude oil in the Eastern States where those markets exist.

Ability to sell crude oil to refineries is dependent upon the ability to make prompt and certain deliveries in large quantities, within stated time, as the same is required for the daily operation of refining plants, and that but for the free use of its pipe lines The Prairie Oil and Gas Company would be unable to market the product in which it deals, to any considerable extent.

In the course of time The Prairie Oil and Gas Company has accumulated a stock of about forty million barrels of crude oil, which can only be marketed by it through the free use of its pipe lines and the mixture thereof with fresh oil, currently produced from the wells.

The Prairie Oil and Gas Company has invested in its property and business more than $60,000,000, more than two-thirds of which is invested in crude oil in stock, steel tanks for the storage thereof, and producing oil properties, all valuable only according to its ability to continue its business of producing, buying, and selling crude oil.

The pipe lines of the company have been constructed, and are now maintained, for the proper conduct of its own private business
85 in such manner that the same can not be operated to their full capacity without mixing such different grades and qualities of oil as are transported therein.

The oil of any given gravity and quality can not be received in the Mid-Continent field and transported through the company's lines, delivering at destination the identical oil received or an equal quantity of equal value, and therefore such lines are not adapted to the transportation of the varying grades and qualities of oil produced in the Mid-Continent field, as a common carrier.

The Prairie Oil and Gas Company can not comply with the order of the Interstate Commerce Commission, referred to in its petition filed herein, and continue the business in which it is now engaged; to do so would require the application of a large amount of its capital and resources to the reconstruction and equipment of its pipe lines, the destruction of its own private business, and its irreparable injury.

It has no charges, tariffs, rules or regulations for the transportation of oil.

And affiant further says it is not true that over eighty per cent (80%) of the total production of the Mid-Continent field is received, stored, and transported by the petitioner, as alleged in the answer of the Interstate Commerce Commission, intervening respondent in the above-entitled cause.

It is not true, as alleged in the answer of intervening respondent, that the price of crude oil in the Mid-Continent field is arbitrarily fixed by petitioner and the refineries, but the prices for crude oil in the Mid-Continent field are fixed, as are the prices of any other commodity, by the law of supply and demand, and each and every producer is free to sell his oil to The Prairie Oil and Gas Company, to the Gulf Pipe Line Company, The Texas Company, or to the more than twenty local refineries, all of whom are now, and for more than a year last past have been, purchasing oil in the Mid-Continent
86 field, and competing with each other for an adequate supply of crude oil, according to their respective business needs.

J. E. O'NEIL.

Subscribed in my presence and sworn to before me this 29th day of October, 1912.

[NOTARIAL SEAL.]

G. F. SNYDER,
Notary Public.

My commission expires February 14, 1913.

87 *Affidavit of W. H. Love. Filed October 29, 1912.*

In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
versus
THE UNITED STATES OF AMERICA, RESPONDENT, AND the Interstate Commerce Commission, intervening respondent. | Docket No. 75.

AFFIDAVIT.

STATE OF KANSAS,
Montgomery County, ss:

W. H. LOVE, of lawful age, being first duly sworn, on his oath deposes and says:

My name is W. H. Love. I reside at Independence, Kansas, and am employed by The Prairie Oil and Gas Company. I have in my charge and under my supervision and control all the records of said company pertaining to its lands, leaseholds, and rights of way. The contract hereto attached is a true and correct copy of the original contract between The Prairie Oil and Gas Company and The Atchison, Topeka and Santa Fe Railway Company, as the same appears on file in my office, relating to the use and occupation by The Prairie Oil and Gas Company of the right of way of such railway company and of the relations of the parties thereto by reason of such use and occupation.

W. H. LOVE.

Subscribed in my presence and sworn to before me this 21st day of October, 1912.

[SEAL.] JOHN FERTIG,
Notary Public.

My commission expires March 9, 1914.

88 Agreement, made this 8th day of September, 1904, between The Atchison, Topeka and Santa Fe Railway Company, a corporation organized and existing under the laws of the State of Kansas, hereinafter called the "Railway Company," party of the first part, and The Prairie Oil and Gas Company, a corporation organized and existing under the laws of the State of Kansas, hereinafter called the "Oil Company," party of the second part:

Whereas the railway company owns and operates a railroad extending from the town of Sibley, in Jackson County, Missouri, through the counties of Jackson, Ray, Carroll, Chariton, Linn, Macon, Adair, Knox, Scotland, and Clark, in said State, and the county of Lee, in the State of Iowa, and the counties of Hancock, Henderson, Warren, Knox, Peoria, Marshall, Livingston, La Salle, Grundy, and Will, in the State of Illinois, to Joliet, in said last-named State; and

Whereas the oil company has requested the railway company to grant to the oil company permission to lay, locate, construct, and maintain upon a strip four feet in width of its right of way between Sibley Station, in the county of Jackson, State of Missouri, and Joliet, in the county of Will, in the State of Illinois, pipe lines for the transportation of oil between said points, and the railway company is willing to grant such permission upon the terms and conditions hereinafter set forth,

Now, therefore, this indenture witnesseth:

ARTICLE I.

In consideration of the payments to be made by the oil company to the railway company, as hereinafter provided, and of the covenants and undertakings of the oil company hereinafter set forth, and of the faithful performance of the same by the oil company, the railway company hereby grants to the oil company the right and privilege to lay, construct, maintain, operate, repair, and remove pipe lines upon a strip of land four feet in width upon its right of way between Sibley Station, in the county of Jackson, State of Missouri, and Joliet, in the county of Will, State of Illinois, said strip of said right of way to be as near as practicable to the outside line of the right of way and station grounds of the railway company, except where it shall become necessary for the same to cross under the tracks of the railway company, and the location of such strip to be subject to the consent and approval, in writing, of the engineer of the railway company. Such strip may be located on either side of the tracks of the railway company, and, for the purpose of obtaining a more favorable location, may cross under said tracks wherever necessary in order to obtain the same, but the location of such crossings and also all work relating to the locating, constructing, maintaining, repairing, or removing of said pipe lines where the same shall be laid under any railroad track or building or other superstructure belonging to the railway company shall be subject in all respects to the supervision, control, and direction of the chief engineer of the railway company, and such right shall include permission to enter upon such right of way to the extent necessary, and no more, for the good, safe, and workmanlike laying, constructing, repairing, and removing the same; provided, nevertheless, that such right and permission are and shall at all times be subject to the performance by the oil company of its agreements hereunder and subject to the following further limitations and conditions, viz:

1. No work of laying or constructing said pipe lines shall be commenced until the location of said four-foot strip thereof shall have been consented to and approved in writing by the chief engineer of the railway company.

2. That such right and permission shall at all times and in all respects be subject to the prior right of the railway company to maintain and operate its railroad upon said right of way without any

interference with or impairment of the safe and convenient operation and maintenance of said railroad and telegraph line by the oil company, its agents, and employes.

3. That neither the oil company nor its agents or employes shall at any time or in any manner delay, obstruct, interfere with, or impair the operation and maintenance of said railroad and the safe, prompt, and convenient movement of trains, engines, and cars thereon.

89 4. That the oil company, its agents and employes, shall assume all risk of injuries to their persons and of all damage to their property upon said right of way, whether caused by the operation of the trains, engines, and cars of the railway company upon said right of way or otherwise.

5. That no implements, tools, machinery, appliances, materials, or supplies required for or used in the construction of said pipe lines, nor any other obstruction or structure whatsoever, shall be erected or placed upon any portion of said right of way within six (6) feet of any track of the railway company; and that nothing herein shall be construed as permitting the oil company to erect, construct, or maintain on said right of way or any part thereof any pumping station, pump house, machinery house, machinery, or other building or construction whatsoever.

6. That the oil company, its agents and employes, shall, at all times in the construction, repair, and removal of said pipe lines, be governed by such reasonable rules, regulations, restrictions, and safeguards, in addition to such as are hereinafter set forth, as may from time to time hereafter be prescribed by the chief engineer of the the railway company.

7. That nothing herein contained shall be construed to permit the use in any manner by the oil company of any bridge or viaducts of the railway company.

8. That nothing herein contained shall be construed as a right and permission to the oil company to enter upon or construct pipe lines upon any portion of said right of way, except such portion as shall be designated in the notice to be given in the manner and in the time aforesaid, and as shall be consented to and approved in writing by the chief engineer of the railway company as aforesaid.

9. That nothing herein contained shall be construed as a covenant, agreement, or representation on the part of the railway company that it has title to said right of way or any portion of the same, or that it has the right or the power to execute this agreement or to grant such right or permission, or that said oil company shall be protected in the exercise, use, or enjoyment of the right and permission herein granted by said railway company.

10. That said right is expressly subject to all existing mortgages, liens, and encumbrances heretofore made by the railway company or by its grantors, and subject to all other licenses, rights, easements, or leases heretofore given by said railway company or by its grantors.

ARTICLE II.

In consideration of the execution of this agreement by the railway company and of the right and permission granted or to be granted as aforesaid, the oil company covenants and agrees to and with the railway company as follows:

1. That it will, on or before the first day of May, 1905, designate in writing to the railway company the portions of said right of way which it desires to occupy with its pipe lines and will thereafter lay, locate, and construct, on such portions of said right of way which shall have been consented to and approved, as herein provided, by the chief engineer of the railway company, a pipe line in a good and workmanlike manner, and will thereafter during the term hereof repair and maintain the same as hereinafter provided.

2. That it will pay to the railway company at the time of giving the notice prescribed in section 1 of this article a sum which in the aggregate shall be equal to fifty dollars for each and every mile in length of the right of way of said railway company designated in the notice hereinbefore provided for, and whenever more than one pipe line shall be laid upon said strip then it will pay to the railway company the sum of fifty dollars per mile in length of all pipe that may be laid upon said strip in addition to the first line of pipe laid thereon.

3. That it will so construct and maintain said pipe lines that at no time, either during the construction thereof or afterwards, shall said pipe line or the construction or maintenance thereof in any respect interfere with, delay, obstruct, or impair the use or operation of the railroad and telegraph line of the railway company or any tracks, buildings, and other improvements on said right of way as the same are now constructed or may be hereafter constructed; and that it will at all times keep and maintain the said pipe lines in
90 good and safe condition and repair; and will, after any work of construction, maintenance, repair, renewal, or removal of said pipe line shall have been completed, promptly clear away and remove from said right of way all implements, tools, machinery, appliances, constructions, materials, and rubbish that shall have been placed or accumulated thereon for the purpose of or by reason of such construction, maintenance, repair, renewal, or removal, and will restore the surface of said right of way to a level and sightly condition, and to substantially such condition as the same was in before such work was begun.

4. That it will promptly upon demand repay to the railway company all sums expended by the railway company under Article III, sections 2, 3, and 4 hereof.

5. That it will promptly perform all its covenants and agreements hereunder, and will faithfully comply with all the terms, provisions, conditions, and limitations hereof.

6. That the railway company shall not be liable for or on account of any destruction of or damage to said pipe lines or any other prop-

erty of the oil company or of others placed or permitted to be placed by the oil company upon said right of way, whether such destruction or damage be caused accidentally or through the negligence or carelessness of the employes or agents of the railway company, or through other cause, all risk of such destruction and damage being hereby assumed by the oil company; and that the oil company will indemnify and save harmless the railway company from and against all claims of and all liability to any employes of the oil company or the executors or administrators of any such employes or to any other person for or on account of any injury to any such employe or for or on account of the death of any such employe caused in the operation of the trains, engines, and cars of the railway company, whether such injury or death be caused accidentally or through the negligence or carelessness of the employes or agents of the railway company.

7. That the oil company will at all times indemnify and save harmless the railway company from or on account of any destruction of or damage to the property of the railway company, and from and against all claims of the owners of any part of the right of way of the railway company not owned by the railway company in fee, and also from and against any and all liabilities, claims, demands, actions, or causes of action or any and all persons whatsoever, whether employes or passengers of the railway company or others, on account of or growing out of any personal injury or death or any damage or destruction of property, that may be caused or occasioned directly or indirectly by the use or occupation of the right of way of the railway company by the oil company or by its agents, contractors, or licensees of the oil company, or by the laying of the pipe lines in or upon said right of way or the maintenance, operation, or repair, or the failure to repair the same, or from the exercise in any manner of the right and permission herein granted, or from the explosion or ignition of oil in or from said pipe line from any cause whatever, or by the carrying on of any of the operations authorized by this agreement; and the oil company will pay, satisfy, and discharge or cause to be paid, satisfied, and discharged all losses, damages, or injuries which the railway company may sustain or incur or become liable for by reason of the matters and things aforesaid, and will pay all losses and expenses incurred by the railway company in defending any action or actions which may be brought against the railway company by any person or persons, corporation or corporations so injured or damaged, and any judgment or judgments that may be rendered against the railway company on account of such injury or damage.

8. That it will promptly pay or discharge all taxes, rates, charges, and assessments levied upon, in respect to, or on account of said pipe lines, so as to prevent the same becoming a charge or lien upon said right of way, lands, or property of the railway company, and so that the taxes, charges, and assessments levied upon or in respect to

said right of way, lands, or property of the railway company shall not be increased by the location, construction, or maintenance of said pipe lines or any improvement, appliance, or fixture connected therewith placed upon said right of way, or on account of the oil company's interest therein. Where such tax, charge, or assessment may not be separately made or assessed to said oil company, but shall be included in the assessment of the right of way, lands, or property of the railway company, then said oil company shall pay to the railway company an equitable proportion of such taxes determined by the value of the oil company's property upon and interest in such right of way, lands, or property of the railway company, as compared with the entire value of such right of way, lands, or property of the railway company.

9. That it will adopt and enforce upon the employes and agents of the oil company such rules, precautions, and regulations for their conduct and guidance as will protect such employes while engaged in or about the oil company's business against injury from trains, engines, or cars operated by the railway company.

91 ARTICLE III.

It is mutually covenanted and agreed by and between the parties hereto as follows:

1. Said pipe lines of the oil company shall be so laid that the top of said pipe lines shall be buried not less than two (2) feet below the surface of the ground and within a strip of land not more than four (4) feet in width, which said strip shall be as near as practicable to the outside line of the right of way and station grounds of the railway company except where it shall become necessary for the same to cross under the tracks of the railway company; and the location of such strip shall be subject to the consent and approval in writing of the chief engineer of the railway company. Such strip may be located upon either side of the tracks of the railway company, and for the purpose of obtaining a more favorable location may cross under said tracks, wherever necessary in order to obtain the same; but the location of such crossings, and also all work relating to the locating, constructing, maintaining, repairing, or removing of said pipe lines, where the same shall be laid under any railroad track or building or other superstructure belonging to the railway company, shall be subject in all respects to the supervision, control, and direction of the chief engineer of the railway company.

2. Whenever the railway company may require, for the convenient operation of its railroad and telegraph line, a change in the location of any portion of such strip or of said pipe lines, then, promptly upon request of the railway company, and at the sole cost and expense of the oil company, the location of such strip shall be changed, and the oil company will from time to time move or change the location of said pipe lines as may be directed by the chief engineer of the rail-

way company, and on failure of the oil company to comply promptly with any such request the railway company shall have the right to so move or change the said pipe lines and their appurtenances, and in case of such change or moving by the railway company, the oil company agrees to repay to the railway company promptly upon demand the entire cost and expense of such change or moving, with ten per cent added thereto for supervision and use of tools, and the oil company shall have no claim for any damage by reason of any such change or moving.

3. In case at any time the said pipe lines or any portion thereof shall, in the opinion of the railway company, be in need of repairs or renewals and the oil company shall refuse or neglect to repair or renew the same forthwith after having been requested to make such repairs or renewals, then and in that case the railway company may, at its option, make such repairs and renewals as it may deem necessary or proper for the protection of its right of way, roadbed, tracks, and other superstructure, and the oil company agrees to pay to the railway company promptly upon demand the entire cost and expense of such renewals and repairs, with ten per cent added thereto for supervision and use of tools, and the oil company shall have no claim for any damage which the oil company may sustain as a result of such repairs and renewals.

4. In case the oil company shall cease to operate said pipe lines for a period of two (2) years, or if the oil company shall fail for a period of thirty (30) days after written demand by said railway company to comply with any of the terms and conditions herein set forth, then the said railway company may on sixty (60) days' notice in writing forthwith terminate the rights herein granted and said oil company shall at once remove said pipe lines from the right of way and station grounds of the railway company, and shall fill up all trenches and excavations made by it and remove the earth and rubbish placed by it upon said right of way, and restore it to substantially the same condition in which the same was before said pipe lines were laid. The oil company failing to so remove said pipe lines said railway company may remove the same from the right of way and station grounds of the railway company and it shall not be held for any claim for loss or damage of any kind or nature to the oil company by reason of the taking up of the pipe lines aforesaid, and the oil company shall forthwith pay to the railway company the amount and expense incurred by it in taking up said pipe lines and restoring the right of way as aforesaid. But no expiration or termination in any manner herein provided of the right herein granted shall relieve or release the oil company from any liability which may have attached or accrued prior to or at the time of such termination, nor from any covenant or obligation of indemnity or to hold the railway company harmless or to pay damages or judgments herein contained.

92 5. That upon the expiration or termination of the right herein given in any manner herein provided the oil company, upon demand of the railway company, without further notice, shall

promptly and peaceably deliver up to the railway company the full and complete possession of that portion of its right of way occupied by said pipe lines and their appurtenances.

6. The covenants, conditions, terms, limitations, and restrictions aforesaid and every part thereof shall run with the grant herein given to the oil company and shall extend to and be binding upon its successors and assigns, provided that no assignment in whole or in part of this right and permission or of any rights of the oil company hereunder shall be made by the oil company except with the written consent of the president of the railway company. The benefits and advantages of said covenants, conditions, terms, limitations, and restrictions, and each of them, and every part thereof, shall inure to the successors and assigns of the railway company, and each and every company, person, or corporation which may own or be in possession of and operate the aforesaid railroad of the railway company now extending from said Sibley to said Joliet to the same extent and as fully as though said company, person, or corporation was specifically named in this agreement in the place and stead of the railway company.

In witness whereof, the parties hereto have caused these presents to be executed and attested by their respective officers thereunto duly authorized and the corporate seals hereunto affixed, in duplicate, the day and year first above written.

[SEAL.] THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,
By E. P. RIPLEY, *Its President.*

Attest:
L. C. DEMING,
Its Assistant Secretary.

[SEAL.] THE PRAIRIE OIL AND GAS COMPANY,
By W. J. YOUNG, *Its President.*

Attest:
R. W. CUMMINS,
Its Secretary.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

I, John B. Corrin, a notary public in and for said county, in the State aforesaid, do hereby certify that W. J. Young, president of The Prairie Oil and Gas Company, and R. W. Cummins, secretary of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such president and such secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 27th day of September, A. D. 1904.

[SEAL.] JNO. B. CORRIN,
Notary Public.

My commission expires March 10, 1907.

93 STATE OF NEW YORK,
County of New York, ss:

I, D. J. Sheehan, a notary public in and for said county, in the State aforesaid, do hereby certify that E. P. Ripley, president of The Atchison, Topeka and Santa Fe Railway Company, and L. C. Deming, asst. secretary of said company, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such president and such asst. secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 8th day of September, A. D. 1904.

[SEAL.] D. J. SHEEHAN,
Notary Public, State and County of New York.

94 *Affidavit of J. P. Seward. Filed October 29, 1912.*

In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
versus
THE UNITED STATES OF AMERICA, RESPONDENT; AND the Interstate Commerce Commission, intervening respondent. } Docket No. 75.

AFFIDAVIT.

STATE OF KANSAS,
Montgomery County, ss:

J. P. SEWARD, of lawful age, being first duly sworn, on his oath deposes and says:

My name is J. P. Seward. I reside at Independence, Kansas; am employed by The Prairie Oil and Gas Company as an accountant, and have charge of the books of said company showing the amount of oil handled by The Prairie Oil and Gas Company. The statement hereto attached, marked "The Prairie Oil and Gas Company, Summary of Runs and Sales, Years 1903 to 1911, inclusive," shows the total number of barrels received, the total number of barrels sold, and the total number of barrels put in or taken out of storage for each of the years respectively covered by such statement, together with the average price paid by The Prairie Oil and Gas Company for

oil during each of said years, and the statements in said summary, herein referred to and hereto attached, are true as shown by the books of account and records of The Prairie Oil and Gas Company.

J. P. SEWARD.

Subscribed in my presence and sworn to before me this 21st day of October, 1912.

[SEAL.] JOHN FERTIG,
Notary Public.

My commission expires March 9, 1914.

95 *The Prairie Oil & Gas Company, summary of runs and sales, years 1903 to 1911, inclusive.*

Year.	Total runs.	Kansas runs.	Oklahoma runs.	Average price for year.	Barrels oil sold.	Barrels oil stored.
1903.....	1,063,069.31	980,361.67	82,707.64	$1.11	480,631.86	582,437.45
1904.....	5,603,036.41	4,236,301.80	1,366,734.61	.94	1,068,328.12	4,534,708.29
1905.....	11,854,822.04	3,244,062.96	8,610,759.08	.546	3,718,899.42	8,135,922.62
1906.....	21,194,156.15	3,128,287.17	18,065,868.98	.459	11,234,386.10	9,959,770.05
1907.....	35,610,339.82	1,696,428.85	33,913,910.97	.403	24,512,323.38	11,098,016.44
1908.....	33,266,281.48	1,155,719.36	32,110,562.12	.4058	24,111,198.50	9,155,082.98
1909.....	28,773,726.98	744,154.92	28,029,572.06	.3798	26,415,677.24	2,358,049.74
1910.....	31,587,312.59	715,884.75	30,871,427.84	.3801	32,967,727.61	[1] 1,380,415.02
1911.....	34,671,780.08	941,684.89	33,730,095.19	.4680	31,821,722.53	2,850,057.55
Total.	203,624,524.86	16,842,886.37	186,781,638.49	.....	156,330,894.76	47,293,630.10

[1] Taken out of tankage.

96 United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE COMMERCE COMMISSION, intervenor. } No. 75.

Correspondence between the petitioner and the U. S. Department of the Interior. Filed October 29, 1912.

"A."

DEPARTMENT OF THE INTERIOR,
Washington, June 26, 1907.

THE PRAIRIE OIL AND GAS COMPANY,
Independence, Kansas.

GENTLEMEN: Referring to the request of the Secretary of the Interior that if you wish to enlarge the pipe-line facilities under your present permit you must come under the new rules and
97 regulations governing the operation of pipe lines in Indian Territory and Oklahoma, and to your reply in which you maintain that The Prairie Oil and Gas Company is not a common carrier, but incorporated and operated with the sole purpose of trans-

porting through its pipe lines its own oil, I have the honor to request that you let me know as soon as practicable:

1. Whether you would be willing to double the capacity of your pipe line from the Kansas border to Tulsa and from Ramona to Chelsa, extending north to Coody's Bluff and from Coody's Bluff to Copan, provided that the department will permit such increase in the capacity of your line within your present right of way, leaving to you the same rights and privileges and responsibilities which are effective as to your existing pipe line.

2. Whether there is any other increase of capacity which you would consider advantageous to the oil producers.

3. How soon you would be able to begin and complete such changes in your pipe-line capacity as might be arranged for and permitted by the department.

4. Whether in your judgment there is such overproduction that an increase in pipe-line facilities over your own right of way, taking fully into account the Texas and Gulf Pipe Lines, is actually necessary to prevent waste of the oil produced.

Very respectfully,

(Signed) GEORGE W. WOODRUFF,
Acting Secretary.

98 (Copy.)

1.

The Prairie Oil and Gas Company, J. E. O'Neil, vice president and general manager.

INDEPENDENCE, KANSAS,
July 20, 1907.

Hon. GEO. W. WOODRUFF,
Acting Secretary of the Interior, Washington, D. C.

DEAR SIR: Replying to your favor of the 26th ult., I respectfully beg to correct the erroneous impression indicated in your opening sentence, which is evidently due to a misapprehension of the previous correspondence.

Our letter, to which you refer, was not in reply to a request of the Secretary of the Interior, that if we wished to enlarge our pipe-line facilities we must come under the new regulations, but was in reply to the letter of First Assistant Secretary Ryan, in which it was asserted that the new regulations applied to all prior as well as subsequent permits, and which requested us to prepare and transmit to the department the ,papers required by such new regulations, although we had not made, nor did we intend to make, any application for permits thereunder.

As we all agreed when Judge Gates and I called upon you at Washington on the 12th inst., the situation is one that requires a
99 great deal of careful consideration. I recall your suggestion that the Secretary of the Interior intends to visit the field and make a personal study of the situation the latter part of August. If

this wise plan is carried out, I shall esteem it a privilege to be permitted to take up and fully discuss the conditions with the Secretary at that time, and to assist him in every way that I can to arrive at a proper appreciation and solution of the questions involved.

Thanking you for the courteous reception accorded us at Washington, I am,

Very respectfully, yours, (Signed.) J. E. O'NEIL.

"B."

DEPARTMENT OF THE INTERIOR,
Washington, July 23, 1907.

Mr. J. E. O'NEIL,
Independence, Kansas.

DEAR SIR: Your letter of July 20 has been received, and I thank you for correcting my erroneous impression concerning the occasion of your letter of June 26. I hope sincerely that you will be able to take up the pipe-line question with the Secretary when he reaches the Territory. I will draw his attention to the necessity of considering the practical effect of the present overproduction of oil.

Very truly, yours,

(Signed.) GEORGE W. WOODRUFF,
Acting Secretary.

100

2.

WASHINGTON, D. C., *February 4, 1908.*

The honorable SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: Referring to the question of the construction of additional lines of pipe by The Prairie Oil and Gas Company in the Oklahoma portion of the Mid-Continent oil field, in order to facilitate the handling of crude oil and also relieve the congested condition which has so long existed and still exists there, caused by the enormous overproduction, which at present is not less than one hundred and ninety thousand barrels (190,000) per day; while the line facilities in operation there at present are not able to handle to exceed one hundred and twelve thousand barrels (112,000) per day, thus leaving more than eighty thousand barrels of available crude oil that could be produced provided there were facilities sufficient to care for it.

I would be willing to recommend to the directors of our company that an appropriation be authorized at once for the construction of two additional outlet lines of not less than eight-inch (8″) pipe, one of these being from the Coody's Bluff district, in the eastern part of the Cherokee Nation, to Caney, Kansas, and the other of said lines from some point in the Creek or Cherokee Nations and extending to some point on the Mississippi River or Gulf coast.

101 The above recommendation to be made to our directors by me, provided The Prairie Oil and Gas Company is permitted

to construct, operate, and maintain the said two lines under the same terms and conditions as the now existing lines of The Prairie Oil and Gas Company in Oklahoma were constructed.

I feel certain that if I were able to show our directors a written agreement from you to that effect, that my recommendation will be approved, and if so, I will agree to have work commenced upon said lines within sixty days from the date of our right to begin construction, such construction to be rushed to completion as rapidly as conditions and weather will permit.

Very respectfully, ——— ———.

(Copy.)

3.

The Prairie Oil and Gas Company, J. E. O'Neil, vice president and manager.

INDEPENDENCE, KANS., *Feb. 18, 1908.*

Hon. JAMES R. GARFIELD,
Secretary of the Interior, Washington, D. C.

DEAR SIR: Again referring to the question of additional
102 lines of pipe for outlets, which I discussed with you while in Washington recently, I have again had this mater up with our directors here and, as I stated to you, we are still of the opinion that we would not care to go into the investment under the existing regulations.

If it could be arranged to permit us to construct the lines under conditions somewhat such as I stated to you in my letter of February 4, I still feel that my recommendations would be approved and the Oklahoma portion of the Mid-Continent field get the much-needed relief. We will soon be caught up with our tank building and I sincerely hope that some way will be presented before that time tending toward the improvement of present existing conditions.

I desire to sincerely thank you for the kind attention and courtesies extended to me by yourself and associates while I was in Washington recently on these matters.

Respectfully, (Signed) J. E. O'NEIL.

103 (Copy.)

4.

The Prairie Oil and Gas Company, J. E. O'Neil, vice president and general manager.

INDEPENDENCE, KANS., *Feb. 18, 1908.*

Hon. GEORGE W. WOODRUFF,
Ass't Attorney General, Washington, D. C.

DEAR SIR: I have this morning written the honorable Secretary of the Interior stating to him that I have again had the matter of the construction of additional lines up with our directors, and we do

not care to go into the enormous investment necessary to carry out the plans I suggested under the existing regulations.

I wish to thank you, as I have the honorable Secretary, for the kindness extended to me by your office on my recent visit there.

Respectfully,

(Signed) J. E. O'NEIL.

104 "C."

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
Washington, February 21, 1908.

Mr. J. E. O'NEIL,
Independence, Kansas.

DEAR SIR: I have just received your letter of February 18. The Secretary, entirely independent of whether The Prairie Oil and Gas Company should apply for the right to construct additional pipe line, has determined to change the regulations to a considerable extent—to such an extent, indeed, as will not make pipe-line companies, under the rules, common carriers by contract only, as opposed to their status under the law.

Please let me know whether the decision of your directors was final for the present, or was merely tentative pending some possible change of regulations.

I am having my secretary sign this for me because I am leaving immediately to catch a train.

Very respectfully, (Signed) GEO. W. WOODRUFF,
Assistant Attorney General,
Per E. H. M.

105 (Copy.)

5.

The Prairie Oil and Gas Company, J. E. O'Neil, vice president and general manager.

INDEPENDENCE, KANS., *Feb. 26, 1908.*

Hon. GEORGE W. WOODRUFF,
Assistant Attorney General, Washington, D. C.

DEAR SIR: Your valued favor of February 21 is before me. As I stated to you in my letter of February 18, our directors did not care to authorize an appropriation covering the very large investment necessary for the construction of the lines under the existing regulations. However, it was not decided at that time that the matter should receive no further consideration. I am of the opinion that I would be able to again have the matter considered, if it could be done along the lines suggested in my letter of February 4 to the honorable Secretary.

Respectfully, (Signed) J. E. O'NEIL.

106

6.

WASHINGTON, D. C., *April 13, 1908.*

Hon. JAMES R. GARFIELD,
Secretary of the Interior, Washington, D. C.

SIR: At present it looks as though it would be a matter of great length of time before the pipe-line regulations are changed in a manner that would justify The Prairie Oil and Gas Company or others desiring to construct and operate pipe lines over lands under the jurisdiction of the Department of the Interior. I had been very hopeful that these regulations would be changed by your department before this time.

In order to better existing conditions in the producing sections of Oklahoma I would respectfully request that you permit The Prairie Oil and Gas Company to build and operate one eight-inch pipe line from the Coody's Bluff District, in the Cherokee Nation, to a point in the territory south of Caney, Kansas, the northern terminal of this line to connect with our present lines at Caney, Kansas. If we were permitted to do this it would practically relieve the congested condition existing in the Shallow Sand field. The producers there have had a long siege of it and certainly need immediate relief. If you will issue this permit under the regulations and conditions which the now existing lines of The Prairie Oil and Gas Company were constructed and have been operated, I will agree to have work
107 started upon this line within ten days from the date of your permit, and will rush the construction of same to completion as rapidly as possible. I sincerely hope that you will see your way clear to do this.

Very respectfully,

(Signed) J. E. O'NEIL,
Vice President the Prairie Oil and Gas Company.

7.

WASHINGTON, D. C., *April 13, 1908.*

Hon. JAMES R. GARFIELD,
Secretary of the Interior.

DEAR SIR:-I desire to make application for a right of way for a pipe line of eight inches in diameter, to be constructed by The Prairie Oil and Gas Company, from the Coody's Bluff section, in the northern portion of the Shallow Sand oil field, Cherokee Nation, to a point on the Oklahoma-Kansas line southeast of Caney—a distance of approximately twenty-six miles—the northern terminal of this line to be at what is known as Cobb pumping station, east of Caney, Kansas, and at that point to connect with the present main outlet lines of The Prairie Oil and Gas Company. This application is made subject only to the regulations as prescribed in the attached papers, which I understand you consider making effective in the near future,
108 and the application is not made in any way so as to bring this line, or the application covering the right of way, under the present existing regulations as of December 21, 1906.

At the present time there is a daily production of fifty-one thousand barrels in the Shallow Sand district, while the outlet facilities are only equal to the care of twenty thousand per day. This additional line will practically take care of the surplus production in the Shallow Sand district.

There are also one or two points in the other producing districts that might be relieved from the existing congestion by the enlargement of the present pipe lines extending to these pools. In other words, I would like to know whether or not The Prairie Oil and Gas Company would be permitted by you, in a case where there is at present a four-inch line, to replace it with a six-inch line, or where there might be a six-inch line, to replace it with an eight-inch line, provided the lines of increased capacity were kept within the right of way of the present smaller lines.

If you will approve the application as presented to you above I will agree to have work commenced on the said eight-inch line within thirty days from this date, and will agree to file the necessary maps and other papers covering the application as soon as you have issued the attached regulations.

Very respectfully,

——— ———.

109 "D."

SECRETARY'S OFFICE,
DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 13, 1909.

Mr. J. E. O'NEIL,
Vice President Prairie Oil and Gas Company.

SIR: I have your letter of the 13th, making application for a right of way to construct an eight-inch pipe line from the Coody's Bluff section, in the northern portion of the Shallow Sand oil field, to a point on the Oklahoma-Kansas line southeast of Caney, a distance of approximately 26 miles.

I will answer this letter more fully within the next few days, but advise you now that this right will be granted as an extension of your existing lines in the Shallow Sand field to Caney, Kansas, which were built under the regulations in existence prior to December 21, 1906. This right is granted for the purpose of relieving the congestion in that field, and will be in accordance generally with the draft of the regulations hereto attached. The few modifications of these regulations, as have been discussed between Mr. Woodruff and you, and as noted in the accompanying draft of regulations, will be formally inserted in the permit when signed within the next few days.

110 I have directed Mr. Woodruff to sign this letter for me, as I am leaving the office.

Very truly, yours,

(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

Per G. W. WOODRUFF,
Ass't Att'y Gen. for the Department of the Interior.

"E."

Z. S. G. W. W.

DEPARTMENT OF THE INTERIOR,
Washington, April 22, 1908.

THE PRAIRIE OIL AND GAS COMPANY,
Independence, Kansas.

GENTLEMEN: In my letter to you dated April 13, I said that I would answer more fully your informal application for a pipe line from the Shallow Sand field to Caney, Kansas. Your application was made with the offer that it should be subject to the conditions contained in certain suggested regulations for pipe lines over allotted Indian land in Oklahoma.

You are hereby informed that if you will file a formal application, as provided in those conditions (a copy of which with proper descriptive heading is hereto attached), your map of location
111 therewith filed will be approved. This approval will be made with the distinct understanding that it is not a precedent concerning any other applications for rights of way you may see fit to make, and also that it shall be entirely subject to the conditions of the suggested regulations which you attached to your application.

My reasons for granting this permit under conditions different from those now in force are: (1) Because of the fact that both the Texas and the Gulf Pipe Line Companies have expressly declared that they can not extend their lines to the Shallow Sand field, and agree that it is right to issue the permit to The Prairie Oil and Gas Company for enlargement of its line into the shallow pool under the conditions herein stated; (2) because the lessors and lessees in that pool are actually in need of greater facilities for disposing of their oil; (3) because the terms of the conditions offered by you amply replace, in this particular instance, any of the conditions of the existing regulations which are omitted from those conditions; and (4) because I can grant this permit practically as a lateral to, or enlargement of, the lines which you are already operating under permits obtained from this department, being an increase in the facilities your company now has.

I understand you claim that your pipe lines in Oklahoma are not common carriers, and that because you are not willing to make them common carriers by contract you could not apply for and
112 build this line under the existing regulations. The granting of this permit is given with the distinct understanding that I do not admit your contention. That matter will be for the courts to decide if, and when, occasion shall arise.

Please file your map of location and the papers required in connection with your application at as early a date as practicable, but

in the meantime accept this as your authority to proceed with construction, subject to the conditions mentioned above.

Very respectfully,

(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
vs.
THE UNITED STATES, RESPONDENT.

Affidavit.

UNITED STATES OF AMERICA,
District of Columbia, ss:

J. E. O'NEIL, being sworn, says he is the president and general manager of the above-named petitioner, The Prairie Oil and
113 Gas Company; that the above papers marked A, B, C, D, and E, also 1, 2, 3, 4, 5, 6, and 7, constitute the correspondence between the said Prairie Oil and Gas Company and the Department of the Interior relative to the location and construction of pipe lines for the transportation of oil in the Indian Territory and Oklahoma; that such correspondence was conducted by himself on behalf of said company, and that the papers marked A, B, C, D, and E are the original letters received by said company from the department, and the papers marked 1, 2, 3, 4, 5, 6, 7, and 8 are true carbon copies of letters from said company to said department.

J. E. O'NEIL.

Sworn to before me and subscribed in my presence this 29th day of October, 1912.

[NOTARIAL SEAL.] G. F. SNYDER.

My commission expires February 14, 1913.

114 *Certified copy of application for right of way for pipe line through Oklahoma. Filed October 29, 1912.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 26, 1912.

I, C. F. HAUKE, Acting Commissioner of Indian Affairs, do hereby certify that the papers hereto attached are true copies of the originals as the same appear on file in this office.

Testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, on the day and year first above written.

[SEAL OF OFFICE OF INDIAN AFFAIRS.] C. F. HAUKE,
Acting Commissioner.

W.

115 (Copy.)

OFFICE OF THE PRAIRIE OIL & GAS COMPANY,
Independence, Kansas.

To the honorable SECRETARY OF THE INTERIOR,
Washington, D. C.:

The Prairie Oil & Gas Company, a corporation organized and existing under the laws of the State of Kansas and duly authorized and entitled to operate in the State of Oklahoma presents this, its application for a right of way for the period of twenty (20) years, in the nature of an easement, for the construction, operation, and maintenance of a pipe line for the conveyance of oil through the State of Oklahoma, which said application is made under the provisions of the act of Congress of March 11th, 1904 (Public, No. 45), and "under conditions attached to the application made by The Prairie Oil & Gas Company, through its vice president, J. E. O'Neil, in its letter to the Secretary of the Interior dated April 13th, 1908," and under the special rules and regulations prescribed by the Secretary of the Interior under date of April 22nd, 1908.

The location and route of the pipe line as herein proposed is as follows, to wit:

Starting at a point from which the southwest corner stone of section five (5), township twenty-six (26) north, range sixteen (16) east, Nowata Township, Nowata County, Oklahoma, bears south seventy-two and one-quarter (72¼°) degrees west thirteen hundred seventy-one (1,371) feet; thence north twenty-nine (29°) degrees west seventy-one hundred ninety seven (7,197) feet; thence north twenty-four and one-half (24½°) degrees west thirteen hundred thirteen (1,313) feet; thence north twenty-seven (27°) degrees west twenty-nine hundred thirty-seven (2,937) feet; thence north forty-one and three-quarters (41¾°) degrees west thirteen thousand sixty-five (13,065) feet; thence north thirty-three and three-quarters (33¾°) degrees west ten hundred thirty-four (1,034) feet; thence north forty-three and three-quarters (43¾°) degrees west thirty-one hundred thirty-six (3,136) feet; thence north forty-three and one-quarter (43¼°) degrees west forty-seven hundred sixty-seven (4,767) feet; thence north forty-one and three-quarters (41¾°) degrees west sixteen thousand nine hundred thirty-six (16,936) feet; thence north forty and one-half (40½°) degrees west eighty-two hundred ninety-eight (8,298) feet; thence north thirty-nine and one-half (39½°) degrees west seven hundred twenty (720) feet; thence north forty and one-half (40½°), degrees west fourteen thousand sixty-two (14,062) feet; thence north thirty-nine (39°) degrees west eight hundred eighty-two (882) feet; thence north forty and one-half (40½°) degrees west thirty-four hundred twenty-five (3,425) feet; thence north forty-one and one-half (41½°) degrees west fifty-

116 seven hundred eighty-nine (5,789) feet; thence north thirty-eight and one-half (38½°) degrees west nine hundred eighty-

one (981) feet; thence north forty-two (42°) degrees west four hundred eighty (480) feet; thence north forty-two and one-quarter (42¼°) degrees west thirteen hundred sixteen (1,316) feet; thence north forty-one and three-quarters (41¾°) degrees west thirty-three hundred twenty-four (3,324) feet; thence north forty-four and one-quarter (44¼°) degrees west twenty-one hundred thirty-eight (2,138) feet; thence north forty-three (43°) west thirty-seven hundred (3,700) feet; thence north forty-four (44°) degrees west fifty-seven hundred fifty-five (5,755) feet; thence north forty-one and three-quarters (41¾°) degrees west sixty-hundred forty-five (6,045) feet; thence north forty-one and one-half (41½°) degrees west seventy-three hundred thirty-nine (7,339) feet to a point on the north line of the State of Oklahoma four hundred and forty-nine (449) feet east of the northwest corner of section fourteen (14), township twenty (29) north, range thirteen (13) east, Washington County, Oklahoma.

For more particular designation of the location and route of the proposed pipe line reference is hereby made to the several maps of definite location which have been prepared and are filed herewith for approval.

In support of its application The Prairie Oil & Gas Company refers to the several certificates, statements, and affidavits, together with a certified copy of its charter filed in support of its application for permission to construct, operate, and maintain pipe lines for the conveyance of oil and gas through the Indian Territory and through the Territory of Oklahoma, and now on file in the office of the Commissioner of Indian Affairs as follows, to wit:

First. A copy of the articles of incorporation of The Prairie Oil & Gas Company, certified by the secretary of the State of Kansas.

Second. A copy of the law of the State of Kansas under which The Prairie Oil & Gas Company was organized, with a certificate of the secretary of state that the same is the existing law.

Third. A certificate of the secretary of state of the State of Kansas that the articles of incorporation of The Prairie Oil & Gas Company were filed in his office on the 17th day of December, 1900.

Fourth. A certificate of the clerk of the United States Court of Appeals for the Indian Territory that The Prairie Oil & Gas
117 Company has complied with the laws governing foreign corporations to the extent required to entitled said company to operate in Indian Territory.

Fifth. A certificate of the secretary of the Territory *of the Territory* of Oklahoma that The Prairie Oil & Gas Company has complied with the laws governing foreign corporations to the extent required to entitle said company to operate in said Territory.

Reference is also made to the several certificates and affidavits appended hereto as follows, to wit:

I. An official statement under seal of the proper officer that the organization of The Prairie Oil & Gas Company has been completed;

that the company is fully authorized to proceed with the construction of the pipe line according to the existing laws.

II. An affidavit of the vice president of The Prairie Oil & Gas Company, and acting president, under seal of said company, showing the names and designation of its officers at the date of the preparation and filing of these proofs.

III. An affidavit of the chief engineer of The Prairie Oil & Gas Company as to the correctness of the location and route of the proposed line as described in application and as accurately represented on accompanying maps; also showing length of line and dates upon which survey was commenced and finished.

IV. A certificate of the vice president of The Prairie Oil & Gas Company that the survey of the route and the maps filed herewith were made under authority of the company, and that the said line of route of the proposed pipe line as accurately represented on accompanying maps were adopted by the company by resolution of its board of directors on the second day of July, 1908.

V. Evidence of the good faith of The Prairie Oil & Gas Company and its financial ability in the matter of the construction of the proposed pipe line.

VI. An official statement under seal of proper officer showing
118 the outlet which they expect to be able to furnish for the crude oil produced in the district to be served; information as to ownership of refineries and its intention of building new refineries; the demand for crude oil for fuel purposes at destination; ownership or control of oil lands and oil leases in the district to be served; estimated cost of construction of the proposed pipe line and terminal facilities; probable capacity of the line to be constructed and estimated total daily production of the district to be served; and its plans to care for the different grades of oil in the district to be served.

In witness whereof the said The Prairie Oil & Gas Company has caused this application to be executed by its vice president and attested by its secretary, and the common seal of said corporation to be hereto affixed, this the 3rd day of July, 1908.

THE PRAIRIE OIL & GAS COMPANY,
By JAMES E. O'NEIL, *Vice President.*

Attest:

ERASTUS T. PATTERSON, *Secretary.*

[The Prairie Oil & Gas Company,
Corporate Seal.
Independence, Kansas.]

STATE OF KANSAS,
Montgomery County, ss:

I, Erastus T. Patterson, secretary of The Prairie Oil & Gas Company, do hereby certify that the organization of said company has been completed; that the company is fully authorized to proceed with the construction of a pipe line, referred to in the foregoing applica-

tion, according to the existing laws of the State of Kansas; and that the copy of the articles of incorporation of the company heretofore filed in the Department of the Interior is a true and correct copy.

In witness whereof I have hereunto set my hand and the corporate seal of the company this the 3rd day of July, 1908.

ERASTUS T. PATTERSON,
Secretary.

[The Prairie Oil & Gas Company.
Corporate Seal.
Independence, Kansas.]

119 STATE OF KANSAS,
Montgomery County, ss:

James E. O'Neil, being duly sworn, says he is vice president of The Prairie Oil & Gas Company, and that the following is a true list of the officers of said company, with the full name and full designation of each, to wit: John F. Archbold, president, New York, N. Y.; James E. O'Neil, vice president, Independence, Kansas; Erastus T. Patterson, secretary, Independence, Kansas; Clark H. Kountz, asst. secretary, Independence, Kansas; John J. Whetsel, treasurer, Independence, Kansas.

JAMES E. O'NEIL,
Vice President.

Subscribed and sworn to before me this 3rd day of July, 1908.

FRED M. WILHELM,
Notary Public, Montgomery Co., Kansas.

My commission expires October 7, 1908.

STATE OF KANSAS,
Montgomery County, ss:

David R. Kinkead, being duly sworn, says that he is chief engineer of the oil pipe line of The Prairie Oil & Gas Company; that the location and route of the pipe line shown in the foregoing application is correct; that the location of the line of route of said pipe line, starting at a point from which the southwest corner stone of section five (5), township twenty-six (26) north, range sixteen (16) east, Nowata Township, Nowata County, Oklahoma, bears south seventy-two and one quarter (72¼°) degrees, west thirteen hundred and seventy-one (1,371) feet; thence continuing in a general northwesterly direction to a point on the north line of the State of Oklahoma four hundred forty-nine (440) feet east of the northwest corner of section fourteen (14), township twenty-nine (29) north, range thirteen (13) east, Washington County, Oklahoma, a total distance of twenty-one and seventy-one one-hundredths (21.71) miles, was made by him or under his direction as surveyor em-
120 ployed by the company and under its authority, commencing on the 16th day of April, 1908, and ending on the 20th day

of April, 1908, and that such survey is accurately represented on the accompanying maps.

DAVID R. KINKEAD,
Chief Engineer.

[Fred M. Wilhelm,
Notary Public,
Montgomery Co., Kans.]

Subscribed and sworn to before me this 3rd day of July, 1908.

FRED M. WILHELM,
Notary Public.

My commission expires October 7th, 1908.

STATE OF KANSAS,
Montgomery County, ss:

I, James E. O'Neil, do hereby certify that I am vice president of The Prairie Oil & Gas Company; that David R. Kinkead, who subscribed the foregoing affidavit, was employed to make the survey by the said company; that the survey of the line of route and location of the proposed pipe line, as accurately represented on the accompanying maps, was made under authority of the company; that the said line of route of the said pipe line so surveyed and as accurately represented on the accompanying maps, was adopted by the company by resolution of its board of directors on the 2nd day of July, 1908, as the definite location of the pipe line referred to in the foregoing application; and that the maps have been prepared to be filed for the approval of the Secretary of the Interior, in order that the company may obtain the benefits of the act of Congress approved March 11th, 1904 (Public No. 45), entitled "An act authorizing the Secretary of the Interior to grant right of way for pipe lines through Indian lands."

JAMES E. O'NEIL,
Vice President.

Attest:

ERASTUS T. PATTERSON,
Secretary.

[The Prairie Oil & Gas Company,
Corporate seal,
Independence, Kans.]

121 STATE OF KANSAS,
Montgomery County, ss:

James E. O'Neil, being duly sworn, says he is vice president and general manager of The Prairie Oil & Gas Company; that the foregoing application for permission to construct a pipe line in the State of Oklahoma is made in good faith, and for the purpose of collecting and transporting oil in and through the State of Oklahoma to the refineries at Neodesha, Kansas, and other points, for the purpose of storing, refining, and marketing the same; that The Prairie Oil & Gas Company has a paid-up capital stock of twenty million

($20,000,000) dollars; and that said company possesses and has under its control ample means to construct and operate the proposed pipe line, and that a large portion of the pipe and other material has already been purchased for the construction of said line.

JAMES E. O'NEIL,
Vice President.

Subscribed and sworn to before me this 3rd day of July, 1908.

FRED M. WILHELM,
Notary Public.

[Fred M. Wilhelm,
Notary Public,
Montgomery, Kansas.]

My commission expires October 7th, 1908.

STATE OF KANSAS,
Montgomery County, ss:

In addition to the several matters set forth in the foregoing application, and in compliance with the provisions of the special rules and regulations prescribed by the Secretary of the Interior under date of April 22nd, 1908, I, James E. O'Neil, vice president and general manager of The Prairie Oil & Gas Company, do further certify that the line therein proposed will connect with the main outlet lines of
The Prairie Oil & Gas Company at Caney, Kansas, and will
122 make an additional outlet from the Shallow Sand district, to
be served by said line, of not less than ten thousand (10,000) barrels per day; that The Prairie Oil & Gas Company owns no refineries, nor has it any intentions of constructing any; that the oil carried through this line will be placed in storage and also marketed to the various refineries; that there is no market or demand for crude oil to be used for fuel at the terminal of this proposed line; that The Prairie Oil & Gas Company owns oil leases in the district to be served by this line aggregating six hundred ninety (690) acres, on which there are thirty-four (34) producing oil wells, with a total estimated daily production of one thousand (1,000) barrels; that The Prairie Oil & Gas Company has no contracts or arrangements of any kind on other leases than those owned and operated by itself; that the cost of the proposed line will be approximately one hundred fifty thousand ($150,000) dollars, including rights of way and station and terminal facilities; that, as stated above, the daily capacity of this line will be not less than ten thousand (10,000) barrels; that the present total daily production of the Shallow Sand district is approximately forty-eight thousand (48,000) barrels; that the lines in operation from that field at present, including one six-inch line and two four-inch lines, are capable of handling about twenty-two thousand (22,000) barrels per day; that the oil produced in the Shallow Sand district is practically all of one grade, with the exception of an occasional well which produces oil below thirty-two (32°) degrees gravity, so that there would be no necessity for ar-

ranging to carry the different grades of oil or of keeping separate accounts of same.

JAMES E. O'NEIL,
Vice President.

Attest:

ERASTUS T. PATTERSON,
Secretary.

[The Prairie Oil & Gas Company,
Corporate seal
Independence, Kansas.]

123 *Certified copy of letter from Secretary of the Interior. Filed October 29, 1912.*

United States of America.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., October 26, 1912.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed papers are true copies of the originals as appears from the records and files of this department.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL OF THE DEPARTMENT OF THE INTERIOR.]

LEWIS C. LAYLIN,
Assistant Secretary of the Interior.
JWH.

124 (Copy.)

Z. S.
G. W. W.

DEPARTMENT OF THE INTERIOR,
Washington, April 22, 1908.

THE PRAIRIE OIL AND GAS COMPANY,
Independence, Kansas.

GENTLEMEN: In my letter to you dated April 13th, I said that I would answer more fully your informal application for a pipe line from Shallow Sand field to Caney, Kansas. Your application was made with the offer that it should be subject to the conditions contained in certain suggested regulations for pipe lines over allotted Indian land in Oklahoma.

You are hereby informed that if you will file a formal application, as provided in those conditions (a copy of which with proper descriptive heading is hereto attached), your map of location therewith filed will be approved. This approval will be made with the distinct understanding that it is not a precedent concerning any other applications for rights of way you may see fit to make, and also that it shall be entirely subject to the conditions of the suggested regulations which you attached to your application.

My reasons for granting this permit under conditions different from those now in force are: (1) Because of the fact that both the Texas and the Gulf Pipe Line companies have expressly declared that they can not extend their lines to the Shallow Sand field, and agree that it is right to issue the permit to The Prairie Oil and Gas Company for enlargement of its line into the shallow pool under the conditions herein stated; (2) because the lessors and lessees in
125 that pool are acutely in need of greater facilities for disposing of their oil; (3) because the terms of the conditions offered by you amply replace, in this particular instance, any of the conditions of the existing regulations which are omitted from those conditions; and (4) because I can grant this permit practically as a lateral to, or enlargement of, the lines which you are already operating under permits obtained from this department, being an increase in the facilities your company now has.

I understand you claim that your pipe lines in Oklahoma are not common carriers, and that because you are not willing to make them common carriers by contract, you could not apply for and build this line under existing regulations. The granting of this permit is given with the distinct understanding that I do not admit your contention. That matter will be for the courts to decide, if, and when, occasion shall arise.

Please file your map of location and the papers required in connection with your application at as early a date as practicable, but in the meantime accept this as your authority to proceed with construction, subject to the conditions mentioned above.

Very respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

(Copy.)

Conditions attached to application made by The Prairie Oil and Gas Company, through its vice president, J. E. O'Neil, in its
126 letter to the Secretary of the Interior, dated April 13, 1908, on the strength of which, by letter of April 13, 1908, the Secretary of the Interior informally granted a permit for said company to build an eight-inch pipe line from the Shallow Sand field across restricted and tribal Indian lands to the pipe line between Oklahoma and Kansas.

THE APPLICATION.

1. No company or individual is authorized to construct oil pipe lines across restrict Indian lands in Oklahoma until authority therefor has been first obtained from the Secretary of the Interior.

2. Any company or individual desiring to obtain such permission must file an application therefor in the Office of Indian Affairs for

transmission to the Secretary of the Interior. Such application should, in as particular a manner as possible, describe the route of the proposed pipe line or lines, and must be accompanied in the case of a company or corporation by the following papers:

A copy of its articles of incorporation, duly certified by the proper officer of the company under its corporate seal or by the secretary of the State or Territory where organized; a copy of any special State or Territorial law under which the company was organized, with certificate of the governor or secretary of the State or Territory that it is the law applicable thereto; when the law directs that the articles of association or other papers connected with the organization be filed with any State or Territorial officer, the certificate of such officer that they have been filed according to law, with the
127 date of filing thereof; proof of compliance with the laws of Oklahoma; the official statement under seal of the proper officer that the organization has been completed and that the company is fully authorized to proceed with the construction of oil pipe lines according to existing laws, such statement to be made upon Form 1, hereinafter set forth; an affidavit by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs, to be made upon Form 2; and satisfactory evidence of the good faith of the company and its financial ability in the matter of the construction of the proposed lines. Applications must also be accompanied by an affidavit of the chief engineer, to be made upon Form 3, a certificate of the president or vice president of the company, to be made upon Form 4, and an application for permission to construct the lines, to be made upon Form 5, all of said forms being hereinafter set forth as a part of these regulations.

3. No exclusive right of way will be granted, nor will a right of way be granted for the construction of a trunk pipe line less than eight (8) inches in diameter, except when such pipe line shall be specifically excepted by the Secretary of the Interior. All applications must be on the prescribed form contained herein; and in addition to the information hereinbefore required, applicants will supply information as to the outlet which they expect to be able to furnish for the transportation of crude or refined oil and to show whether they are the owners or possessors of oil refineries at the point of destination, and of their intentions, if any, to construct new refineries.

4. Information will be required as to the demand for fuel oil and other petroleum products at or near the points of des-
128 tination and the prices prevailing therefor, and with respect to existing refineries at such points; and applicants for a right of way hereunder will show their present interest, if any, in oil wells and oil lands, whether direct, or by agent, or by contract or other arrangements with the owners, lessees, or other persons or companies interested, directly or indirectly, in such wells or lands and declare the nature of the contracts or arrangements with such owners.

5. Applications must be accompanied by an estimate of the cost of construction of the proposed pipe lines, pumping stations, and storage tanks, their daily capacity in barrels, and such information as is obtainable in regard to the probable production of the field intended to be served, and an outline of the plans to serve the field entered by the lines, the arrangements for storing and shipping oils of different grades, and the system for keeping account of such shipments.

6. All companies or individuals maintaining and operating pipe lines under these regulations shall make monthly reports covering the purchase of oil from Indian lands under the Department of the Interior, and the price per barrel paid for the different grades of oil from these lands, such reports to be made to the Secretary of the Interior, or his representative, not later than the twentieth of each succeeding month. The Secretary of the Interior, or his duly accredited representative, shall at any and all times be permitted to examine the books of said pipe-line companies or individuals for the purpose of verifying such monthly statements and procuring such other information as may be necessary in connection with the enforcement of these regulations.

129 Any change in the prices paid for crude oil by pipe-line companies or individuals operating under these regulations shall be reported to the Secretary of the Interior within twenty-four hours after the change becomes effective.

7. Owners of pipe lines holding rights of way under these or former regulations shall pro rate the oil purchased, or run through their lines among the different properties which may reasonable be served by such pipe line, taking into consideration the capacity of each line as compared with all lines operating in the field, and including properties owned, controlled, or operated by such pipe-line owners, and shall not discriminate between producers in such field in the prices paid for like grades of oil. Any dispute arising under this regulation shall be determined by the Secretary of the Interior, whose decision shall be binding on the parties to the controversy.

MAPS OF DEFINITE LOCATION.

8. Maps of location presented for approval under these regulations shall be drawn on tracing linen, in duplicate, and filed in the Office of Indian Affairs.

Where the proposed line is in excess of 20 miles, separate maps must be filed in approximately 20-mile sections.

The scale of maps showing the line of route shall be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary, but the scale must not be so greatly increased as to make the map inconveniently large for handling.

The termini of the line of route shall be fixed by reference of course and distance to the nearest existing corner of the public sur-

vey. The map, engineer's affidavit, and president's certificate upon Forms 3 and 4, hereinafter set forth, shall each show these conditions.

130 Each map must be accompanied by evidence of the service of an exact copy thereof, and the date of such service, on the United States Indian agent or other officer in charge.

Except for good and sufficient reasons to the contrary, no action will be taken on such maps until the expiration of twenty days from the date of such service.

A company will not be permitted to proceed with the construction of any part of its line until the map and application showing the location thereof have first been approved by the Secretary of the Interior.

9. When the construction of an oil pipe line is completed, an affidavit, in duplicate, made by the individual owner or the president of the company setting forth the fact, must be filed in this office; and should a change from the route indicated on the approved map of location be found to be necessary, on account of engineering difficulties or otherwise, new maps and field notes of the changed route must be filed and approved, and a right of way on such changed lines acquired, damages ascertained, and compensation paid on account thereof, in all respects as in the case of the original location, before construction on such changed line shall be allowed to proceed.

COMPENSATION AND DAMAGES.

10. On the approval of a map of definite location, specific directions will be given in the matter of the acquirement of the right of way and determination of damages occasioned by the construction of the line. The United States Indian agent or other officer in charge will, as a rule, be designated to determine the compensation and damages, subject to the approval of the Secretary of the

131 Interior. No company or individual shall independently attempt to negotiate with allottees for such right of way and settlement of damages.

11. When any subsequent damages may arise by reason of the bursting of any pipe or by the entry on any land of any nation or tribe, individual occupant, or allottee of the employees of a company or individual for the purpose of repairing the line, compensation therefor shall be made to such tribe, occupant, or allottee under directions of the Secretary of the Interior.

MANNER OF CONSTRUCTION.

12. Pipe lines authorized under these regulations shall be buried a sufficient depth under the surface as not to interfere with the cultivation of the land above and at the risk of the company or individual laying them. Any authority granted to any company or individual is subject to the right of the full use and enjoyment of the

premises by the nation or tribe, individual owner, occupant, or allottee, except as otherwise provided by the act and these regulations.

13. Any individual or company obtaining the benefits of these regulations does so with the understanding that all claims for damages of whatever nature to any of the pipes or pipe lines arising from the cultivation in the usual manner of the land lying above such pipes or pipe lines are waived on the part of said individual or company.

14. Where such pipes or pipe lines are laid under any road or traveled highway the individual or company constructing them shall keep open to travel during construction at least one-half in width of such road or highway, and on completion of construction shall restore such highway to its original condition, refilling any
132 excavation whenever, by settling or other causes, the necessity may arise.

15. Wherever any such pipes or pipe lines are constructed across a ravine, canyon, or waterway they shall be laid either below the bed of such ravine, canyon, or waterway, or on such suitable superstructure as will not cause obstructions.

PUMPING STATIONS AND TANK SITES.

16. Where additional right of way is required for the location of pumping stations or sites for receiving and distributing tanks, application therefor should be made in manner as herein provided for pipe lines, accompanied by a map showing the location of the right of way desired with connecting line to the main pipe line. Applications for such additional right of way may be submitted separately or may be incorporated in the application for the main line.

Action with respect to the approval of maps of this character will be taken on the merits of each case, considering the character of the holdings. The matter of compensation will be determined in such manner as the Secretary of the Interior may direct in each case.

IN GENERAL.

17. No pipe line or any controlling interest in the same or in the company owning the same shall in any way, either directly or indirectly, be sublet, transferred, assigned, sold, or mortgaged to any other pipe line company or to any individual or individuals controlling or owning any other pipe line company, without the written consent of the Secretary of the Interior.

18. Any permit subject to these regulations shall be subject to any reasonable changes or amendments in or to these regulations
133 hereafter made by the Secretary of the Interior, but such changes or amendments shall be for the purpose only of protecting the interests and allotted property under the jurisdiction of the Secretary of the Interior.

19. It is expressly understood and agreed that, if any of the provisions of these regulations are violated, or if any pipe line owner is involved in any transaction, agreement, or combination to improperly fix or control the price, supply, or distribution of oil, the Secretary of the Interior, after thirty days' notice, may suspend or revoke the grant of right of way hereunder.

20. The provisions of these regulations, so far as applicable, shall control pipe lines for the conveyance of natural gas and the granting of rights of way for such lines.

134 *Order. Entered October 31, 1912.*

In the United States Commerce Court, October session, 1912.

THE PRAIRIE OIL AND GAS COMPANY
v.
UNITED STATES OF AMERICA. } No. 75.

On motion of counsel for the petitioner in open court made, all parties being present, it is ordered that leave be, and the same is hereby, given the petitioner to amend its petition herein forthwith.

And on motion of counsel for the United States it is ordered that leave be given the United States to withdraw its answer filed herein and to file a motion to dismiss the said petition as amended.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

135 In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
UNITED STATES OF AMERICA, RESPONDENT. } No. 75.

Motion of the United States to dismiss the petition as amended.

Motion to dismiss. Filed October 31, 1912.

Comes now the United States, respondent, and moves this honorable court to dismiss the petition as amended in open court on October 29, 1912, and in support of said motion shows:

That the said petition does not state a cause of action.

Wherefore this respondent prays that said petition be dismissed.

WINFRED T. DENISON,
Assistant Attorney General.

OCTOBER 29, 1912.

136 In the United States Commerce Court.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA ET AL., RESPONDENTS. } No. 75.

Order for completion of the record. Entered March 29, 1913.

It appearing that copies, duly certified by the Interstate Commerce Commission, of the following tariffs of common carrier pipe-line companies, namely: (1) The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5; (2) National Transit Company Joint Tariff, I. C. C. No. 12; and (3) Memorandum of the division of the rates named in said I. C. C. No. 12, were offered by counsel for the United States at the hearing on the motion for preliminary injunction in the above-entitled cause and were received and considered by this court but by oversight were not filed with the clerk,

It is ordered, this 29th day of March, 1913, that said certified copies of said tariffs be filed and made a part of the record in the above-entitled cause, nunc pro tunc, as of October 31, 1912.

MARTIN A. KNAPP,
Presiding Judge.

137 INTERSTATE COMMERCE COMMISSION.
Washington.

(Filed March 29, 1913, nunc pro tunc, as of October 31, 1912.)

I, John H. Marble, Secretary of the Interstate Commerce Commission, do hereby certify that the documents hereto attached, and more particularly hereinafter described, are true copies of schedules lawfully filed with the said Interstate Commerce Commission on dates specified below, to wit:

The Texas Company Pipe Line Tariff No. 5, I. C. C. No. 5, filed on May 21, 1908.

National Transit Company Joint Tariff, I. C. C. No. 12, filed on September 25, 1908.

Memorandum of the division of rate named in said I. C. C. No. 12, filed on May 28, 1912.

In witness whereof I have hereunto set my hand and affixed the seal of said commission this 25th day of October, A. D. 1912.

[SEAL.] JOHN H. MARBLE,
Secretary of the Interstate Commerce Commission.

138 THE TEXAS COMPANY PIPE-LINE TARIFF.

Received Interstate Commerce Commission, May 28, 1908. Division of Rates & Transportation. 72055.

The rates named by this tariff are for the interstate transportation of crude petroleum by The Texas Company's Oklahoma-Texas Trunk Pipe Line and are subject to the regulations made part hereof and set forth on page 2, and are expressed in cents per barrel of 42 United States gallons.

From the point in the Glenn pool (Oklahoma), now established for reception of crude petroleum, into The Texas Company's Trunk Line.

To any one of the Texas points named below at the rate indicated in each instance, to wit:

To West Dallas (Texas) station on said trunk line, at twenty (20) cents per barrel.

To Eleanor (Texas) station on said trunk line, at twenty (20) cents per barrel.

To Corsicana (Texas) station on said trunk line, at twenty-five (25) cents per barrel.

To Beaumont (Texas) station on said trunk line, at thirty-five (35) cents per barrel.

To Port Arthur (Texas) station on said trunk line, at thirty-seven and one-half (37½) cents per barrel.

NOTE.—All deliveries at destination to customer's vessels or to customer's tanks connected with The Texas Company's lines will be subject to a further charge of 2½ cents per barrel.

NOTE.—Upon demand for such appearing, the company is prepared to consider proper promulgation of tariffs for intermediate points not covered by this or other tariffs in force.

"Issued under special permission of the Interstate Commerce Commission, No. 5522, of date May 18, 1908."

Issued May 19, 1908. Effective June 1, 1908.

Subject to change under terms of law.

J. S. CULLINAN,
President of The Texas Company, Houston, Texas.

139 THE TEXAS COMPANY REGULATIONS.

The Texas Company will undertake interstate transportation of crude petroleum only by its trunk pipe line, receiving and delivering such through its own facilities, and not otherwise, subject to further provisions as follows:

1. Separate pipeage contracts for shipments in accord with this tariff, and these regulations, covering other proper details, must be executed by the parties a reasonable time before the duty of transportation arises.

2. Crude petroleum will be received subject to the right and to the consequences of mixing such with and delivering such from common stock only, the minimum gravity at time of its reception for transportation to be 30 degrees Beaumé; the usual and proper methods of measurements to apply.

3. Storage incident to and during transportation only is available and can be afforded, and the shipper must provide facilities for receiving the oil at destination.

4. The right to require prepayment or acceptable security for charges is reserved; also satisfactory assurance that the crude petroleum is free from liens and charges and that the shipper has the right to direct its disposition.

5. No limitations are prescribed at this time as to quantities, but reasonable limits will be required by the terms of pipeage contracts; and in the event of tenders in excess of capacities, including outstanding pipeage obligations, the right to reasonably allot and apportion is reserved by The Texas Company, and tender for transportation shall not be good for quantities in excess of such as is already in, or available for immediate delivery into, The Texas Company's pipe lines at the time of such tender.

6. Patrons may use, without additional charge, the company's private telegraph lines for messages incident to the business; The Texas Company, however, not to be liable for delivery of messages away from its offices, nor for delay in transmission, nor for interruption of service.

7. All crude petroleum transported under this tariff is subject to further charges for gathering preliminary to receiving the same into the main trunk line, according to the then existing schedule of such charges, which are subject to change and which at present are as follows:

Where the distance is 15 miles or more, 20 cents per barrel.

Where the distance is less than 15 miles but more than 10 miles, 15 cents per barrel.

Where the distance is less than 10 miles, 12½ cents per barrel.

Air line distance to apply, in accord with The Texas Company's field maps. If other delivery is desired special arrangements must be made, covering additional charge proportionate to the service rendered, in no case to be less than 2½ cents per barrel.

8. In case of fire destroying any oil in the custody of The Texas Company's Pipe-Line Department, after oil has been received for transportation and before the same shall have been delivered to the consignee, the shipper shall stand a loss proportionately, as the amount held for such shipper bears to all the oil, including its own, in the custody of The Texas Company's Pipe-Line Department at the time of such fire, and shall be entitled to have delivered only such proportion of such shipment as is left after deducting the proper proportion of the loss, as above; but in such event shall be required to pay carriage charges only on the quantity of oil delivered—statements of quantities ascertained and computed from the records in the usual manner by The Texas Company shall be accepted as prima facie correct in the adjustment of a loss under this clause.

140 JOINT TARIFF.

(Two copies to be posted at the receiving station, as required by law.)

National Transit Company in connection with South West Pennsylvania Pipe Lines F X 3 No. 1; the Eureka Pipe Line Company F X 3 No. 1; and Southern Pipe Line Company F X 3 No. 1.

Received Interstate Commerce Commission, Sep. 25, 1908. Division of Rates & Transportation. 125490.

The rates named in this tariff are for the transportation of crude petroleum oil by pipe lines, subject to the regulations named within.

From Nedsky, Pa. (via Morgantown, W. Va.), to Fawn Grove, Pa. Rates per bbl. of 42 gallons, 32 cts.

In addition to said rate all oil tendered for shipment to Fawn Grove, Pa., at points in Pennsylvania other than Nedsky, Pa., will be subject to a further charge of 20c. per barrel of 42 gallons each for gathering and transporting the same to Nedsky.

The rates named in this tariff are subject to change at any time upon the National Transit Co. giving the thirty (30) days' notice required by law.

Issued September 23d, 1908. Effective October 28th, 1908.

GEORGE CHESEBRO,
Secretary National Transit Co., New York, N. Y.

141 REGULATIONS.

This company will receive crude petroleum for interstate transportation only to established delivery stations on its own lines and lines of connecting pipe-line companies on the following conditions:

First. It will receive crude petroleum for interstate transportation when the shipper has provided the necessary facilities for receiving said petroleum as it arrives at destination.

Second. Orders for the shipment of any specified kind of such crude petroleum shall only become effective when orders from the shipper, in connection with orders from other shippers, for the same kind and quality of petroleum shall amount in the aggregate to seventy-five thousand (75,000) barrels or more, consigned to the same point of delivery; and, subject to this requirement, orders for shipment shall become operative in the order in which they shall have been received.

Third. It will forward such crude petroleum when there has been tendered to it by the shipper, individually or by him and others, a quantity of the same kind and quality of crude petroleum amounting in the aggregate to not less than seventy-five thousand (75,000) barrels, all of which shall be consigned for delivery to the same delivery point.

Fourth. All such crude petroleum will be accepted for transportation only on condition that it shall be subject to such changes in quality while in transit as may result from the mixture of said petroleum with other petroleum in the pipe lines or tanks of this or the connecting company or companies.

Fifth. Crude petroleum will only be accepted for transportation when free from all liens and charges.

Sixth. This company is not engaged in the transportation of refined oil and will not, therefore, accept the same for transportation.

Seventh. Any patron of this company wishing to send telegrams pertaining to the oil business will be allowed to do so free of charge. This does not include any delivery of telegrams at destination except at the company's office.

142 Memorandum of the division of rate named in joint tariff I. C. C. No. 12, issued by the National Transit Company in connection with South West Pennsylvania Pipe Lines, The Eureka Pipe Line Company, and Southern Pipe Line Company, for the transportation of crude petroleum oil from Nedskey, Pa., to Fawn Grove, Pa., effective June 1, 1912. This memorandum is made in accordance with conference ruling No. 209.

Received. Interstate Commerce Commission. May 28, 1912. Division of Tariffs. 34856.

The rate given was from Nedskey, Pa., to Fawn Grove, Pa., at 32 cents per barrel of 42 gallons. The division of this rate rests on verbal agreement and is as follows:

	Per barrel of 42 gallons.
The Eureka Pipe Line Company	3.83 ¢.
South West Pennsylvania Pipe Lines	5.07
Southern Pipe Line Company	19.34
National Transit Company	3.76
Total	32.00 ¢.

S. R. Ball,
Secretary National Transit Company.

Oil City, Pa., *May 27, 1912.*

143 *Journal entries.*

No. 75. The Prairie Oil & Gas Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 76. The Uncle Sam Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 77. Robert D. Benson et al., petitioners, vs. The United States of America, respondent; Interstate Commerce Commission et al., interveners.

No. 78. The Ohio Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 79. Standard Oil Company, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

No. 80. Standard Oil Company of Louisiana, petitioner, vs. The United States of America, respondent; Interstate Commerce Commission, intervener.

PROCEEDINGS OF OCTOBER 29, 1912.

It was announced by the court that these causes would be heard together. Thereupon all of said causes came on for
144 hearing upon the applications for a preliminary injunction and No. 75 upon the motion of the United States to dismiss, and the arguments of counsel were commenced, Mr. W. S. Fitzpatrick, Mr. W. I. Lewis, and Mr. John G. Milburn appearing on behalf of the petitioners.

PROCEEDINGS OF OCTOBER 30, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were continued, Mr. John G. Milburn appearing on behalf of the petitioners, Mr. Albert L. Wilson on behalf of the Uncle Sam Oil Company, petitioner in No. 76, Mr. Blackburn Esterline on behalf of the United States, and Mr. Charles W. Needham on behalf of the Interstate Commerce Commission.

PROCEEDINGS OF OCTOBER 31, 1912.

Thereupon all of said causes came on for further hearing upon the applications for a preliminary injunction and No. 75 for further hearing upon the motion of the United States to dismiss, and the arguments of counsel were concluded, Mr. Charles W. Needham appearing on behalf of the Interstate Commerce Commission, Mr. Winfred T. Denison, Assistant Attorney General, on behalf of the United States, and Mr. John G. Milburn on behalf of the petitioners. Thereupon counsel for the United States was granted leave to file an affidavit, said affidavit to be first submitted to Mr. Milburn.
145 Mr. Milburn, of counsel for the petitioners, was granted leave to file a brief on monopoly within one week and opposing counsel were given one week thereafter in which to file briefs in reply. Thereupon said causes were taken under advisement by the court.

204 In the United States Commerce Court, October session, 1912.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT;
Interstate Commerce Commission, intervener. } No. 75.

Order denying motion of the United States to dismiss the petition. Entered March 14, 1913.

This cause came on to be heard at this session, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First, that the motion filed herein by the United States of America to dismiss the petition be and the same is hereby denied.

Second, that leave be and the same is hereby granted to the United States of America to file its answer to the said petition within fifteen days from the date hereof, if it shall be so advised.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

205 In the United States Commerce Court, October session, 1912.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; INTERSTATE Commerce Commission, intervener. } No. 75.

Order granting preliminary injunction. Entered March 14, 1913.

This cause came on to be heard at this session, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

First, that a preliminary injunction be, and the same is hereby, issued, as prayed for in the petition, against the order of the Interstate Commerce Commission entered June 3rd, 1912, the effective date of the same having been extended to March 15th, 1913, notifying and requiring the petitioner to file with the Interstate Commerce Commission schedules of its rates and charges for the transportation of oil, in compliance with the provisions of the act to regulate commerce, a copy of which order is attached to the petition and made a part thereof; and that the said order and its force and effect be, and the same is hereby, suspended, restrained, and enjoined until the further order of the court.

Second, that a duly certified copy of this order be forthwith served by the marshal of this court upon the Attorney General of the United States and the chairman of the Interstate Commerce Commission.

By the court:

MARTIN A. KNAPP,
Presiding Judge.

206 DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the chairman of the Interstate Commerce Commission by leaving a certified copy thereof with Alfred Holmead, assistant secretary. March 14, 1913.

F. J. STAREK, *Marshal.*

DISTRICT OF COLUMBIA, *ss:*

I hereby certify that on the 14th day of March, 1913, I served the within order granting preliminary injunction on the Attorney General by leaving a certified copy thereof with Blackburn Esterline. March 14, 1913.

F. J. STAREK, *Marshal.*

207 In the United States Commerce Court, October session, 1912.

THE PRAIRIE OIL AND GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT; AND INTERSTATE COMMERCE COMMISSION, intervening respondent. } No. 75.

Petition for appeal. Filed March 22, 1913.

The United States of America, respondent; and Interstate Commerce Commission, intervening respondent, feeling themselves aggrieved by the interlocutory order or decree of the Commerce Court, entered March 14, 1913, granting a preliminary injunction suspending and enjoining the order of the Interstate Commerce Commission until the further order of the court, by their respective counsel, pray an appeal to the Supreme Court of the United States, in accordance with section 2 of an act entitled "An act to create a commerce court," etc., approved June 18, 1910.

The particulars wherein the United States and the Interstate Commerce Commission consider said order or decree erroneous are set forth in the assignment of errors on file, to which reference is made.

And the United States and the Interstate Commerce Commission further pray that a transcript of the record, proceedings, and papers on which the said order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

J. C. MCREYNOLDS,
Attorney General of the United States.
CHAS. W. NEEDHAM,
Solicitor for Interstate Commerce Commission.

Allowed:

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court in said cause.

208 In the United States Commerce Court, October session, 1912.

THE PRAIRIE OIL & GAS COMPANY, PETITIONER,
v.
THE UNITED STATES OF AMERICA, RESPONDENT, AND INTERSTATE COMMERCE COMMISSION, INTERVENING RESPONDENT. } No. 75.

Assignment of errors. Filed March 22, 1913.

Come now The United States of America, respondent, and Interstate Commerce Commission, intervening respondent, by their respective counsel and in connection with their application for appeal, file the following assignment of errors on which they will rely upon said appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court entered March 14, 1913, in the above-entitled cause.

The Commerce Court erred:

I. In holding and adjudging that the amendment of June 29, 1906, to the act of Congress entitled "An act to regulate commerce," etc., approved February 4, 1887, which provides that "The provisions of this act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, * * * who shall be considered and held to be common carriers within the meaning and purpose of this
209 act * * *," is unconstitutional and void, as in violation of the fifth amendment to the Constitution of the United States.

II. In construing the said amendment of June 29, 1906, relating to pipe lines, as a declaration by Congress that all private pipe-line companies doing business in interstate commerce shall become and be common carriers subject to the provisions of the act to regulate commerce, and in not construing the said amendment as a declaration by Congress that the transportation of crude oil in interstate commerce by means of pipe lines should thereafter be carried on only by common carriers subject to the provisions of the act to regulate commerce.

III. In holding and adjudging that the receiving and storing stations and the market places established by petitioner at the points of production of crude oil in the Mid-Continent field and the inspecting, grading, measuring, purchasing, and receiving of oil thereat by petitioner did not constitute such public receiving and storing stations, public markets for the purchase and sale of crude oil and a part of the transportation thereof in interstate commerce subject to regulation by the Congress.

IV. In holding and adjudging that the construction and operation of pipe lines upon and over the public streets and highways and upon and over the rights of way of common carriers by railroad subject to the act to regulate commerce and transporting interstate

traffic through said pipe lines did not subject the said pipe-line companies to the regulating power of Congress.

210 V. In not holding and adjudging that the ownership and operation of the pipe lines by the petitioner and the manner and form in which the same are used in the purchase, transportation in interstate commerce, and sale of crude oil, and the combining of the business of the transportation of crude oil in interstate commerce with the business of dealing in that commodity, constitute monopoly and monopolistic tendencies, and that Congress has the power to destroy monopoly and to prevent monopolistic tendencies by declaring that the interstate transportation of crude oil by means of pipe lines shall be carried on by common carriers, subject to the provisions of the act to regulate commerce.

VI. In holding and adjudging that the ownership and operation of the pipe lines in question and the manner and form in which the same are used and the combining of the business of the transportation of crude oil in interstate commerce with the business of dealing in that commodity do not tend, in the nature of things, to or result in monopoly and monopolistic tendencies, and that the Standard Oil case (221 U. S., 1), to which the petitioner was a party, has no application to the present controversy, even though, as was found in that case, the petitioner was a party to and a part of an illegal combination and conspiracy in restraint of trade and commerce, and as such its business methods were adopted and its pipe lines were acquired and operated for the purpose of monopolizing crude oil and controlling the output and price thereof and obstructing the free flow and movement thereof in the channels of interstate commerce.

211 VII. In not holding and adjudging that the petitioner, when it was a part of an illegal combination in restraint of interstate trade and commerce in 1906, adopted its manner of doing business for the purpose of obstructing the free flow and movement of crude oil in the channels of interstate commerce and of thwarting and evading regulation under the act to regulate commerce, while at the same time carrying on the business of a common carrier of crude oil by means of pipe lines in interstate commerce and controlling the output, purchase, sale, and transportation thereof in interstate commerce.

VIII. In granting the motion for a preliminary injunction and in suspending and restraining the order of the Interstate Commerce Commission entered June 3, 1912, referred to in the petition, and in not denying the said motion, for that (a) the petition of the petitioner does not set forth any cause of action and is insufficient to warrant the granting of the preliminary injunction or to form the basis for any relief from the said order; (b) nor had the said petitioner shown that there is any equity in the said petition upon which to grant the preliminary injunction or to form the basis for any relief from the said order; (c) nor has the petitioner shown that in making its said order the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon

it by the act to regulate commerce; (d) nor has the petitioner shown that in making its said order the Interstate Commerce Commission violated any right of the petitioner protected by the Constitu-
212 tion of the United States, or any other right of the said petitioner over which this court may exercise jurisdiction.

Wherefore, The United States and the Interstate Commerce Commission pray that the said interlocutory order or decree of the Commerce Court, entered March 14, 1913, be reversed, annulled, and set aside, and that the petition be dismissed, and for such other and further order as may be appropriate.

J. C. McReynolds,
Attorney General of the United States.
Chas. W. Needham,
Solicitor for Interstate Commerce Commission.

213 In the United States Commerce Court, October session, 1912.

The Prairie Oil & Gas Company, petitioner,
v.
The United States of America, respondent, and Interstate Commerce Commission, intervening respondent. } No. 75.

Order allowing appeal. Entered March 22, 1913.

In the above-entitled cause, the United States of America and the Interstate Commerce Commission having made and filed their petition praying an appeal to the Supreme Court of the United States from the interlocutory order or decree of the Commerce Court, entered March 14, 1913, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided—

It is ordered and decreed, that the said appeal be, and the same is hereby, allowed as prayed and made returnable on the twenty-first day of April, A. D. 1913; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

Martin A. Knapp,
Presiding Judge of the United States Commerce Court.

214 United States Commerce Court.

The Prairie Oil & Gas Company, petitioner,
vs.
The United States of America, respondent; Interstate Commerce Commission, intervener. } No. 75.

United States of America, *ss:*

I, G. F. Snyder, clerk of the United States Commerce Court, do hereby certify the above and foregoing (on pages numbered 1 to 213, inclusive) to be a true and complete transcript of the proceedings

had and papers filed in the above-entitled cause, as the same appear from the original record in the clerk's office of said court.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States Commerce Court this 4th day of April, A. D. 1913.

[SEAL.] G. F. SNYDER, *Clerk.*

215 *Citation on appeal.*

UNITED STATES OF AMERICA, ss:

To The Prairie Oil & Gas Company, a corporation:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States Commerce Court, wherein the United States of America and Interstate Commerce Commission are appellants and you are appellee, to show cause, if any there be, why the interlocutory order or decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Martin A. Knapp, presiding judge of the United States Commerce Court, this 22d day of March, in the year of our Lord nineteen hundred and thirteen.

MARTIN A. KNAPP,
Presiding Judge of the United States Commerce Court.

Service of a copy of the within citation is hereby admitted this 29th day of March, A. D. 1913.

W. S. FITZPATRICK,
J. B. F. CATES,
Solicitors for Appellee The Prairie Oil & Gas Company.

216 In the Supreme Court of the United States, October term, 1913.

THE UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
THE PRAIRIE OIL AND GAS COMPANY, APPELLEE. } No. 1053.

Stipulation.

It is hereby stipulated and agreed, by and between the parties, by their respective solicitors, that the following documents contained in the record need not be printed, viz: Opinion of the Commerce Court, announced and filed March 11, 1913; report of the Interstate Commerce Commission in the proceeding entitled "In the Matter of Pipe Lines, No. 4199;" and that upon the hearing the court and the counsel may refer to and use the printed copies of the said docu-

ments and each of them, which have been filed by the appellants in United States of America et al. v. The Ohio Oil Company, No. 1012, to all intents and purposes as though printed in the record herein.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General, for the United States.

CHAS. W. NEEDHAM,
Solicitor for the Interstate Commerce Commission.

W. S. FITZPATRICK AND J. B. F. CATES,
Solicitor for The Prairie Oil and Gas Company, Appellee.

(Indorsed:) Filed No. 23628. Supreme Court U. S. October term, 1913. Term No. 1053. The United States et al., appellants, vs. The Prairie Oil & Gas Company. Stipulation to omit lants, vs. The Prairie Oil & Gas Company. Stipulation to omit part of the record in printing. Filed April 23, 1913.

(Indorsement on cover:) File No. 23628. U. S. Commerce Court. Term No. 1053. The United States of America and Interstate Commerce Commission, appellants, vs. The Prairie Oil & Gas Company. Filed April 10th, 1913. File No. 23628.

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